

CHAPTER 2

CULTURAL RESOURCES PROCEDURES

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CHAPTER 2

CULTURAL RESOURCES PROCEDURES

2-1 INTRODUCTION

As part of its environmental policy, Caltrans considers historic properties and historical resources during the project development process. The treatment of these resources is an important part of the planning, development, and maintenance of transportation facilities.

[Chapter 1](#) of this handbook describes federal and state laws and regulations concerning the treatment of historic properties significant in American history, archaeology, culture, architecture, and engineering. [Chapter 2](#) describes how Caltrans complies with those laws and regulations.

Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, [36 CFR §800](#), provide the regulatory mechanism for considering the effects to historic properties on projects with federal involvement (federal funding and/or approval action). Where there is no federal involvement, the California Environmental Quality Act ([CEQA](#)) and Public Resources Code [§5024](#) and [§5024.5](#) are the primary regulations governing consideration of cultural resources, supported by [Executive Order W-26-92](#).

Under Section 106, the term “historic properties” means any cultural resources, including archaeological properties, which have been listed in or determined eligible for listing in the National Register of Historic Places (National Register), the regulations of which are found at 36 CFR §60. State law identifies “historical resources” as properties that meet the criteria for listing in the National Register or the California Register of Historical Resources (California Register), as well as properties that are designated as historic under local ordinances and properties that have been identified as significant in a local survey that meets the state Office of Historic Preservation (OHP) standards. Properties that are determined not eligible for the National Register may still meet the state criteria and require consideration under state law. See [Chapter 4](#) for eligibility criteria.

For Caltrans purposes the term “cultural resources” means any tangible or observable evidence of past human activity, *regardless of significance*, found in direct association with a geographic location, including tangible properties possessing intangible traditional cultural values. This broad definition is meant to ensure that all potential historic properties subject to consideration under Section 106 of the National Historic Preservation Act of 1966 and its implementing regulations (36 CFR Part 800) and historical resources subject to

consideration under the California Environmental Quality Act of 1970 will be recognized and given appropriate consideration.

Once a cultural resources is evaluated, if it is found to be significant, it then becomes a historic property under NHPA, or a historical resource under CEQA, depending on whether federal and/or state regulations apply (see sidebar).

The process for considering cultural resources on state-only projects generally parallels that which is followed on federally funded and/or approved projects. Caltrans policy is to treat resources in the same manner regardless of the funding source. The treatment of historical resources on state-only projects follows the federal standard although regulatory procedures differ (see sections 2-6 through 2-9).

Historic property	<ul style="list-style-type: none"> • Federal term • District, site, building, structure, or object • Significant in American history, architecture, engineering, archaeology, or culture • National, state, or local level of significance • Meets National Register criteria • Includes properties that have been listed in or determined eligible for listing in the National Register of Historic Places
Historical resource	<ul style="list-style-type: none"> • State term specific to CEQA • Object, building, structure, site, area, place, record, or manuscript • Historically or archaeologically significant, or significant in other specific aspects of California life • National Register & California Register listed and eligible properties • Includes resources that have been listed in or determined eligible for listing in the California Register of Historical Resources by the State Historical Resources Commission • Resources designated as historic under local landmark ordinances • Resources identified as significant in local survey meeting Office of Historic Preservation Standards

This chapter focuses on the standard procedures Caltrans uses in the identification, evaluation, and treatment of historic properties and on the documents used in compliance procedures. Unusual situations may require case-by-case handling; consult the appropriate specialist in Headquarters' Cultural and Community Studies Office (CCSO) of the Division of Environmental Analysis (DEA) in such circumstances.

PROFESSIONALLY QUALIFIED STAFF

It is Caltrans policy that all persons carrying out these procedures, whether Caltrans staff or consultants, must meet the appropriate federal and state professional qualifications standards, as established by the Secretary of the Interior, the State Personnel Board, and Caltrans (see Chapter 1 [Section 1-3.4](#) of this volume). Furthermore, any studies submitted under the Section 106 PA (discussed below) must be prepared by or under the supervision of appropriate

Professionally Qualified Staff (PQS) as described in [Section 106 PA Attachment 1](#). Caltrans PQS are responsible for ensuring that all approvals, determinations, and findings for all Section 106 documents meet the requirements of the Section 106 PA. The CCSO Chief is responsible for certifying Caltrans staff, and will also review consultants' qualifications on request. Questions on certification should be addressed to the Chief, Section 106/PA Coordination Branch (Section 106 Branch) in CCSO.

PQS are certified to work under the Section 106 PA in the course of their duties related to federal undertakings under Section 106 of the National Historic Preservation Act. This certification applies only to responsibilities and activities conducted under the direction of Caltrans District or Headquarters Environmental offices. It does not apply to any other work that may be conducted on behalf of any other office, agency, entity, or individual. This certification applies to Caltrans employees only, and it terminates upon leaving Caltrans employment.

2-2 PROJECTS WITH FEDERAL INVOLVEMENT

2-2.1 INTRODUCTION

Section 106 of NHPA, as amended, requires federal agencies to take into account the effect of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment. Federal agencies are responsible for complying with Section 106, although they may authorize others to perform specific tasks. The term "agency" as used in describing the Section 106 process may mean either the federal agency itself or any party acting on its behalf, but the ultimate responsibility for complying with the law remains with the federal agency. For most Caltrans projects, the Federal Highway Administration (FHWA) is the lead federal agency involved. On occasion, other federal agencies are involved or may act as the lead federal agency on a Caltrans project. When FHWA is the lead agency (funding and/or approval authority) other federal agencies may assume the lead on Section 106 only if FHWA has agreed to an alternate process in advance.

Because FHWA is the lead agency on the majority of Caltrans projects, *the term FHWA in this chapter is used to mean federal agency*. When other federal agencies assume the Section 106 lead on Caltrans projects, the delegations and procedures of that agency will govern the Section 106 process.

The regulations implementing Section 106 are published at [36 CFR §800](#). Those regulations allow the Council and the federal agency to negotiate a pro-

grammatic agreement ([Section 106 PA](#)) to govern implementation of a particular program. FHWA has negotiated such an agreement with Council, the State Historic Preservation Officer (SHPO), and Caltrans to implement the Federal-Aid Highway Program in California. Under the provisions of the Section 106 PA, FHWA authorized Caltrans to perform many of the Section 106 steps, yet retained direct involvement for those aspects of Section 106 that are more complex, relate to other FHWA legislative responsibilities such as 4(f), and that involve financial decisions. It is anticipated implementation of the Section 106 PA will result in timesavings in project delivery. The Section 106 PA specifically requires all Section 106 compliance work to be performed by or under the supervision of Caltrans PQS. A copy of the Section 106 PA is attached as [Exhibit 1.1](#). [Exhibit 2.1](#) contains a Section 106 PA flowchart that may be useful for working with the Section 106 PA. [Exhibit 2.2](#) contains a concordance between the Section 106 PA and the regulations at 36 CFR 800.

The following guidance on Section 106 compliance incorporates changes in the regulatory process prescribed by the Section 106 PA.

Where the undertaking occurs on or affects tribal lands, the Section 106 PA does not apply and FHWA shall follow the procedures at 36 CFR §800. On tribal lands where the tribe has assumed the Section 106 responsibilities of the SHPO, FHWA consults with the Tribal Historic Preservation Officer (THPO). In the absence of a THPO, FHWA consults with the tribal representative and SHPO. [Chapter 3](#) provides details on THPO involvement and consultation with Indian tribes.

SEISMIC RETROFIT PROGRAMMATIC AGREEMENT

For projects involving seismic retrofits to bridges, Caltrans, FHWA, SHPO, and Council entered into a programmatic agreement in 1995 that streamlined much of the Section 106 compliance work. That agreement is still in effect, even though it was under a previous version of the regulations at 36 CFR §800. [Chapter 7](#) contains guidance on how to comply with Section 106 for seismic retrofit bridge projects. Note that a project must involve work *only* on the bridge for it to fall under the [Seismic Retrofit Programmatic Agreement](#).

2-2.2 OVERVIEW OF SECTION 106 UNDER THE SECTION 106 PA

Under the Section 106 PA, the Section 106 process, briefly, is as follows:

The Project Development Team (PDT), defined in the Project Development Procedures Manual, identifies any federal involvement on a project and determines the existence of an undertaking subject to Section 106.

Undertaking, as defined by the 1992 amendments to NHPA, means any project, program, or activity with federal funding or under the direct or indirect jurisdiction of a federal agency, *including federal license, permit, or approval, or administered pursuant to federal agency delegation or approval*. Not all

undertakings are subject to Section 106. Those undertakings that may result in changes in the character or use of historic properties, regardless of whether any such properties are located in the project's Area of Potential Effects, are subject to Section 106. Most Caltrans projects do have federal involvement and are thus subject to Section 106. The federal *action* defines the undertaking, not the anticipated presence or absence of historic properties.

Next, Caltrans PQS determine and document the project's Area of Potential Effects (APE), the area within which the undertaking could cause changes in the character or use of historic properties, if any were present.

Qualified professional staff or consultants begin cultural resources studies to identify and evaluate cultural resources within the APE. They look for the findings of any previous studies, and then conduct research, consultation, and surveys as needed to identify any resources that require consideration. Caltrans applies the National Register criteria to any properties requiring evaluation and requests SHPO's concurrence that properties are eligible or not eligible for inclusion in the National Register, with concurrent submittal to FHWA.

If no historic properties are identified within the APE, either because:

- There are no properties present which require evaluation, or
- The properties have been evaluated and determined not eligible and SHPO concurred,

Caltrans makes a finding that no historic properties will be affected and concurrently notifies SHPO and FHWA (See [Section 2-5.2](#)).

When historic properties are present and there is a potential for effect, Caltrans, in consultation with SHPO, FHWA, and consulting parties, applies the Criteria of Adverse Effect to determine whether its proposed undertaking could affect those properties. If an effect is found, Caltrans, in consultation with SHPO and FHWA, determines whether the effect should be considered adverse.

Undertakings, unless screened and determined to be exempt from further review (see [Section 2-3.2](#)) will result in a determination of No Historic Properties Affected, No Adverse Effect, No Adverse Effect with Standard Conditions (all of which would conclude Section 106), or a determination of

Other federal agencies may have involvement that would constitute an undertaking with or without FHWA participation. For example, a federal agency's permit requirement, such as an Army Corps of Engineers Section 404 (of the Clean Water Act) permit or a Forest Service or Bureau of Land Management use permit would also trigger Section 106. At the other agency's discretion, it may fulfill its Section 106 responsibilities by using applicable provisions of the Section 106 PA.

Adverse Effect. To conclude Section 106 compliance on undertakings having an Adverse Effect, FHWA, and SHPO will usually enter into a Memorandum of Agreement (MOA) that specifies how the adverse effect will be taken into account. Caltrans is routinely a concurring party to the MOA. Other parties may also be involved at FHWA's discretion.

2-2.3 IDENTIFYING FEDERAL INVOLVEMENT

The PDT, in consultation with FHWA, determines if there will be federal involvement on a project, which will typically make it an undertaking subject to Section 106. In some cases, the decision will have been made earlier as part of developing the State Transportation Improvement Plan (STIP). The PDT makes a final decision on federal involvement as early as possible in the project development process.

An action by a federal agency, such as FHWA or the Federal Transit Administration (FTA), triggers Section 106 on Caltrans projects. Most commonly, the action would be FHWA funding. On occasion, more than one agency will be involved, and a lead agency will then be identified. When FHWA funding or approval authority is involved, other federal agencies may assume the lead on Section 106 only if FHWA has agreed to an alternate process in advance.

On projects involving a permit from the U.S. Coast Guard and a historic bridge, early coordination is essential. Such projects may require preparation of an Environmental Impact Statement (EIS), regardless of other environmental documentation needs, based on a 1985 agreement between FHWA and the U.S. Coast Guard.

Federal involvement will be found in the following cases:

- Projects modifying access to an interstate highway.
- Any project where federal aid will be used for engineering, construction, or right of way.
- Any project for which federal approvals, permits, or licenses may be required.
- Any project that relinquishes or disposes of property on right of way financed with federal funds (District Right of Way should ascertain if there is a federal interest).

FHWA or other federal agencies may also be involved in a project implemented in response to an officially declared disaster.

2-2.4 ADDITIONAL GUIDANCE FOR WORKING WITH SECTION 106

Federal agencies bear the responsibility for compliance with Section 106 for their undertakings, although they may authorize others to perform a portion of

the actual work. Caltrans identifies, evaluates, and treats historic properties and prepares most required documents on behalf of FHWA. Caltrans, in turn, may contract some work to private consultants.

FHWA retains ultimate responsibility for Section 106 compliance on its undertakings, regardless of who prepares the documentation.

The DEA in Headquarters has specialists in Section 106 processes, Native American coordination, archaeology, architectural history, history, and mitigation measures. They are available to answer questions and to help Districts complete the requirements of the Section 106 PA. Districts are to rely upon these specialists as a first-line resource in answering project-specific questions and in developing compliance strategies for unusual or complex Section 106 compliance situations. If necessary, DEA specialists may consult with FHWA or SHPO, especially for difficult or possibly precedent-setting situations.

Federal publications provide valuable assistance in working with the Section 106 process. Many are available on-line through the [Advisory Council on Historic Preservation](#) and the National Park Service [Links to the Past](#), and include:

- [National Register Evaluation Criteria](#)
- [Archeology and Historic Preservation](#): *Secretary of the Interior's Standards and Guidelines* (National Park Service, September 29, 1983)
- [Section 106 Regulations Text](#) and [Section 106 Summary](#)
- [Section 106 Flow Chart](#) and [Section 106 Explanatory Material](#)
- [Section-by-Section Questions and Answers](#)
- *Protecting Historic Properties: A [Citizen's Guide](#) to Section 106 Review*
- [Indian Sacred Sites and Section 106](#) (relationship Between E.O. 13007 and Section 106)
- Consultation on [Recovery of Significant Information](#) from Archeological Sites
- [Section 106 Consultation Involving National Historic Landmarks](#)
- [Consulting with Indian Tribes in the Section 106 Review Process](#)
- Federal [Alternate Procedures](#) for Section 106

Older Section 106 guidance that has some applicability, but is not available on-line, includes:

- *Preparing Agreement Documents: How to Write Determinations of No Adverse Effect, Memoranda of Agreement, and Programmatic Agreements Under 36 CFR Part 800* (Advisory Council on Historic Preservation, September 1989)
- *Public Participation in Section 106 Review: A Guide for Agency Officials* (Advisory Council on Historic Preservation, February 1989)
- *Identification of Historic Properties: A Decisionmaking Guide for Managers* (Advisory Council on Historic Preservation, September 1988)

FHWA guidance on historic preservation issues includes:

- [Section 4\(f\) Policy Paper](#) (revised March 1, 2005)
- Guidance for [Preparing and Processing Environmental and Section 4\(f\) Documents](#)
- Section 4(f) – [23 CFR 771.135](#) as amended
- [Technical Advisory 6640.8A](#).

2-2.5 MANAGING THE SECTION 106 PROCESS

The Project Development Team formally initiates environmental studies, including cultural resources studies, by submitting plans showing proposed project alternatives with best estimates of Right of Way requirements. The term “cultural resources studies” (formerly called historical studies) describes all research, consultation, and survey work for the full range of cultural resources.

Preliminary environmental and cultural resources studies should be started early, at the Project Initiation Document (PID) stage. Early studies involve such activities as walkovers and reconnaissance (windshield) surveys, supplemented by basic information on previously recorded cultural resources and archaeological sensitivity of the project area. Obtaining this information early in the process allows environmental consequences to be included in the factors governing identification of feasible alternatives. Early surveys can reduce project development time spent on alternatives that would obviously have unacceptable environmental consequences. In particular, early identification of consulting parties is crucial to meeting project schedules.

If information available at the PID stage indicates that historic properties could be involved, every effort should be made to develop realistic project schedules. Scheduling decisions should acknowledge the time required to complete the Section 106 process.

The time required for achieving Section 106 compliance varies considerably. It takes little time for projects that do not require cultural resources studies or which have no potential to affect historic properties. It can take three years or more, however, to complete the process for projects requiring extensive work. Longer time frames may also be needed if contracting for studies is involved.

Compliance time can be reduced by conducting early studies to help avoid alternatives that would affect excessive numbers of properties, by scheduling cultural resources studies as early as possible in the environmental process, by communicating closely with the PDT, and by careful delineation of APEs (neither too large nor too small) for the purpose of conducting environmental and cultural resources studies that are both efficient and in compliance with applicable laws. [Exhibit 2.3](#) provides estimates of the range of time required for

certain cultural resources studies while [Exhibit 2.4](#) suggests their sequential order.

Coordination between the District Environmental Branch Chief (DEBC) and the appropriate cultural resources staff in the District Environmental Branch, the Caltrans Project Manager, and FHWA Transportation Engineer or other federal representative is crucial throughout the process.

2-2.6 STRATEGY CONSULTATION

Informal initial strategy consultation can be useful in unusual, controversial, or complex compliance situations. These discussions or meetings may be between District and CCSO cultural resources specialists and managers or between District staff and FHWA and should be held before submitting formal documentation. If issues arise which cannot be resolved, the PDT can request the CCSO Section 106 Branch Chief to initiate a strategy meeting with SHPO staff. On rare occasions, the Council can participate, usually by phone.

Strategy consultation may be crucial under the following circumstances:

- When a project may involve particular areas of concern to Native Americans where internal negotiations have not resolved the disagreement.
- When there is disagreement among agencies over significance, effect, or treatment of historic properties.
- When a project involves substantial local controversy.

It also may be appropriate to discuss strategy with other governmental entities, particularly land-managing agencies or tribal governments that have an interest in historic properties that Caltrans projects may affect.

Caltrans should make every effort to solve issues internally or in consultation with FHWA without contacting SHPO, as SHPO staffing levels do not allow for frequent individual discussion of historic property issues. To reduce the volume of routine calls to SHPO, District staff is to contact the CCSO Section 106 Branch Chief for advice on policy, procedures, eligibility, and effect issues or project status.

The Section 106 Branch Chief will initiate SHPO consultation when such consultation is warranted. In general, contacts should be limited to situations with complex or unusual issues, projects with high public interest, and circumstances in which appropriate application of the regulations is uncertain. District staff may contact SHPO directly in critical situations, such as a late discovery or an emergency when immediate response is essential. FHWA should be notified in advance of any action for which they are responsible under Section 106.

2-2.7 INTERSTATE HIGHWAY FEDERAL EXEMPTION

Effective March 10, 2005, the Advisory Council on Historic Preservation issued its “Section 106 Exemption Regarding Effects to the Interstate Highway System.” (Federal Register Vol. 70, No. 46, pp. 11028-11931). The exemption “concerns solely the effects of Federal undertakings on the Interstate Highway System.”

- The exemption releases all federal agencies from the Section 106 requirements of having to take into account the effects of their undertakings on the Interstate System, except for a limited number of individual elements associated with the system.
- By June 30, 2006, FHWA Headquarters must designate those individual elements that still may be subject to Section 106 review. Designation will be made following consultation with: state DOTs, FHWA Division, SHPOs, ACHP, and the public. Questions or disagreements about National Register eligibility will be resolved in consultation with the Keeper of the National Register.
- The individual elements which may be excluded from the Exemption, and therefore considered under Section 106 are as follows:

EXCLUSION REQUIREMENT	AGE	LEVEL OF SIGNIFICANCE	NATIONAL REGISTER (NR) ELIGIBILITY	SPECIAL CONSIDERATIONS
Must be excluded	50 years old	National	Meet NR eligibility criteria	--
Must be excluded	Less than 50 years old	National	Meet NR eligibility criteria	Meet Criterion Consideration (g) for exceptional significance
Must be excluded	50 years old or less	Any	Listed in the NR or determined eligible by the Keeper prior to date of this exemption	--
May be excluded at FHWA discretion	Constructed prior to June 30, 1956	National, state or local	Meet NR eligibility criteria	Elements include but are not limited to: bridges, tunnels, and rest areas

Other caveats and requirements:

- Federal agencies must take into account effects of undertakings on other historic properties that are *not* components of the Interstate System, such as adjacent historic sites or archaeological sites within the right of way.
- FHWA will post on its [Historic Preservation](#) website the individual elements that are to be excluded.

- FHWA will recognize, interpret and commemorate the public history of the Interstate System, including publishing a popular publication and/or development of a website to provide information and educational material about the Interstate Highway Stem and its role in American History.

Contact the CCSO Section 106 Branch Chief for any questions concerning the applicability of the Interstate Highway Exemption.

This exemption is for federal undertakings only and does *not* exempt Caltrans from compliance with CEQA, PRC §5024 or other state laws and regulations. For instance, a bridge on the Interstate that is exempted from review for Section 106 undertakings would still have to be evaluated for PRC §5024 or CEQA compliance and might, for the purposes of those state laws and regulations, be found eligible for inclusion in the National Register or as a historic resource under CEQA.

2-3 SECTION 106 PROCEDURES UNDER THE SECTION 106 PA

2-3.1 INTRODUCTION

The Section 106 procedures explained below follow the order laid out in 36 CFR §800, with changes prescribed by the Section 106 PA. The steps are essentially linear, although in practice they may overlap or be compressed. It is essential to be aware of where the project is in the process.

The Section 106 process may conclude at various places in the process, when resolution is reached at any one of the following steps:

- Caltrans, on behalf of FHWA, determines that the activity is not an undertaking subject to Section 106.
- Caltrans, on behalf of FHWA, determines the undertaking meets the criteria for Screened Undertakings in accordance with [Section 106 PA Attachment 2](#) and Stipulation VII of the Section 106 PA.
- Caltrans, on behalf of FHWA, finds that the project will result in No Historic Properties Affected, and notifies FHWA and SHPO, when
 1. No properties of any kind are present,
 2. *None* of the properties are eligible for the National Register and SHPO has concurred, or
 3. Historic properties are present but the undertaking will have no effect on them.
- Caltrans, FHWA, and SHPO agree that the project will have No Adverse Effect on historic properties.

- On projects with an Adverse effect, Caltrans, FHWA, and SHPO, and including Council in special circumstances, sign a Memorandum of Agreement on how to take effects into account.
- On the rare occasions when no agreement is reached, FHWA takes Council's written comments into account, decides whether and how to proceed with its proposed activity, and notifies Council of its decision.

2-3.2 SCREENED UNDERTAKINGS

Certain undertakings by their very nature have little potential to affect historic properties. FHWA, SHPO, and Caltrans recognize this and account for it in the Section 106 PA under Stipulation VII and [Attachment 2](#), in an effort to streamline cultural resource compliance. The attachment lists 29 classes of undertaking that must be screened before being exempted from Section 106 review. As with all other actions under the Section 106 PA, a Caltrans PQS must conduct the screening process. Only the specific actions on the list qualify for screening, but an undertaking comprised of several actions on the list can be screened.

If conditions must be imposed on the undertaking to ensure that potential historic properties would not be affected (e.g., fencing to protect an archaeological site) the undertaking will not qualify as exempt from further review.

Screening may involve reviewing relevant documents, such as maps, photographs, previous cultural studies, and project plans. It may involve a field review of the project location or consultation with knowledgeable individuals. Personal knowledge of the project location may be important and should be included where relevant. Based on the outcome of the screening process, the Caltrans PQS may determine that individual undertakings are exempt from further review because there is no potential to affect historic properties. The CE-Section 106 Cultural Resources Checklist or a memo for the project files constitutes the documentation necessary to complete the Section 106 process for screened undertakings determined exempt from further review. The Caltrans PQS who screened the undertaking prepares a memo that includes a description of the undertaking, the screening process, and the results of screening that led to the conclusion that the undertaking qualified as exempt from further review. [Exhibit 2.5](#) contains a sample memo to file. See [Section 106 PA Attachment 2](#) and Chapter 4, [Section 4-2.1](#) for further guidance.

2-3.3 SCOPE OF IDENTIFICATION EFFORTS

The Section 106 process begins when the PDT identifies that an undertaking is subject to Section 106 compliance. See [Section 2-2.2](#) for the definition of an

undertaking. Once it has been determined that an undertaking exists, Caltrans initiates the steps to identify any historic properties that might be affected by the project.

Identifying historic properties involves six steps:

- a) Determine the scope of identification efforts [[36 CFR §800.4\(a\)](#)].
- b) Establish the APE [36 CFR §800.4(a)(1)].
- c) Consult with Indian tribes, other Native Americans, local governments, local groups (e.g. historical societies, landmark commissions, historic preservation groups), and other interested parties.
- d) Identify properties (which includes conducting cultural resources surveys) [[36 CFR §800.4\(b\)](#)].
- e) Evaluate the significance of properties in the APE using the National Register criteria [[36 CFR §800.4\(c\)](#)].
- f) Report the results of the identification and evaluation efforts [[36 CFR §800.4\(d\)](#)].

ESTABLISHING THE AREA OF POTENTIAL EFFECTS

The first step in determining the scope of identification efforts and a critical step in conducting cultural resources studies is to establish the project's APE.

As defined in [36 CFR §800.16\(d\)](#), an APE is “the geographical area or areas within which an undertaking may *directly or indirectly* cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” Setting an APE is a *prospective* activity and the known or suspected presence or absence of actual historic properties is irrelevant at this stage.

The APE should define the boundaries of the area within which a proposed project might affect properties. It should be just large enough to include in their entirety all properties being studied (with special consideration for long linear features) that could under any reasonable circumstance be affected by the proposed undertaking. [Section 106 PA Attachment 3](#) provides specific details on aspects to consider when delineating the APE and setting direct and indirect APEs.

The minimum APE for considering *direct effects* is generally the required right of way, plus areas subject to ground-disturbing activities, such as utility relocation, equipment staging areas, and designated storage, disposal, or borrow sites. If a site is identified, the APE is drawn to encompass the known or presumed boundaries of archaeological properties. If the proposed project has potential for indirect effects to archaeological sites, the APE may need to be

expanded, and consultation with SHPO early in the scoping process should be considered. Consult the CCSO Section 106 Branch Chief if a question arises.

It is permissible to distinguish Direct APE and Indirect APE on project maps, but users should note that they are Caltrans terms that have no regulatory basis. The project's vertical and horizontal extent should always be considered in establishing both the Direct and Indirect APE.

Buildings and structures can be affected by land use changes and by visual, noise, or atmospheric intrusions beyond the right of way. To consider these *indirect effects*, the APE for the built environment in an urban or suburban environment often includes one row of buildings beyond the proposed right of way, if warranted. The assessor's parcel may be used to define the boundaries of a property for inclusion within the APE. When warranted by the nature of the project or other factors such as topography or property size, the APE can be substantially larger or smaller. Judgment must be exercised where assessor's parcels are very large, as is often the case with rural properties. See [Section 4-3](#) for additional guidance on setting the APE.

APE maps must be of a scale suitable to depict the boundaries of major project features (e.g., right of way, edge of pavement) relative to property boundaries.

The Section 106 PA makes Caltrans PQS and Project Managers jointly responsible for setting the APE. They will sign any maps or plans that define or redefine an APE. For Local Assistance projects, the District Local Assistance Engineer will sign as the project manager. When the guidance in [Section 106 PA Attachment 3](#) is followed, specific consultation with SHPO will not typically be necessary. If consultation on the APE is deemed necessary, it should be initiated through the CCSO Section 106 Branch Chief. While the Section 106 PA authorizes Caltrans to define the APE, SHPO and FHWA may always comment on the adequacy of that delineation.

Cultural resources specialists conduct studies within the APE to identify the presence or absence of historic properties. When studies must begin prior to establishing the APE, District Environmental Branch PQS, in consultation with the PDT, may designate a reasonable *Study Area* for use in conducting cultural resources studies until an APE can be delineated. The Study Area should encompass all land that might possibly be included in the final APE. Project reports would then include both the Final APE and the Study Area Map as appropriate.

If studies reveal a resource such as a large potential historic district or long linear feature that extends beyond the designated APE boundaries, the entire resource must be considered as a whole, even if the APE may or may not eventually be formally revised to encompass the entire resource. See [Section 106 PA Attachment 3](#) for further guidance on the relationship of APE boundaries to larger historic properties.

The final APE map must be formally designated by the time the Historic Property Survey Report (HPSR) is complete because the final APE map appears as an exhibit in the HPSR that documents Section 106 compliance.

SEEKING INFORMATION ON HISTORIC PROPERTIES

The next steps in determining the scope of identification efforts include seeking information from consulting parties and others who might have knowledge of resources in the project area (preliminary research), and gathering information from Indian tribes regarding resources that might have cultural or religious significance to the tribe and thus might be eligible for the National Register. Section 106 regulations requires federal agencies to employ a “reasonable and good faith effort” to identify historic properties. In deciding what constitutes a reasonable and good faith effort, Caltrans PQS should consider the following factors for any particular undertaking:

- Past planning, research, and studies.
- Magnitude and nature of the undertaking.
- Degree of federal involvement.
- Nature and extent of potential effects on properties.
- Likely nature and location of properties within the APE.
- Applicable standards and guidelines.
- Confidentiality concerns.

GATHERING INFORMATION ON HISTORIC PROPERTIES (PRELIMINARY RESEARCH)

Caltrans PQS first look for previously evaluated properties within the APE. Chapter 4 [Section 4-4](#) discusses preliminary research in more detail. At a minimum, however, sources that are to be consulted on all projects include:

- National Register of Historic Places.
- California Register of Historical Resources.
- California Historical Landmarks.
- Points of Historical Interest.
- State and local inventories of historical resources.
- Caltrans Historic Highway Bridge Inventory, if applicable.
- The appropriate regional Information Center of the California Historical Resources Information System (CHRIS).
- Sacred Lands Inventory File, Native American Heritage Commission.

The regulations specifically call for FHWA to consult with Indian tribes about properties that may have religious or cultural significance to them. The Section 106 PA authorizes Caltrans to carry out this consultation on FHWA's behalf; however, FHWA will honor the request of any Indian tribe for direct government-to-government consultation. [Chapter 3](#) discusses this process and Caltrans role in government-to-government consultation. Additional contacts for information about possible resources in the project area may include local historical societies, museums, and members of the public.

Although 36 CFR §800.4 calls for agencies to request information from SHPO, the California SHPO does not have staff or facilities to provide research services. By reviewing appropriate databases, consulting historical resource listings, and requesting records searches from Information Centers and other sources, as described in [Chapter 4](#) and documenting the results accordingly, Caltrans is deemed to have complied with this requirement.

PROPERTIES EXEMPT FROM EVALUATION

Caltrans, FHWA, and SHPO recognize that certain cultural resources categorically appear, under ordinary circumstances, to possess little or no potential for significance. Since the federal regulations require a "reasonable and good faith effort" to identify historic properties, Caltrans, SHPO, and FHWA have agreed to concentrate efforts on properties that *could* be significant. [Section 106 PA Attachment 4](#) contains a list of certain properties that are exempt from evaluation; however, it is important that Caltrans PQS determine which properties meet the requirements of Attachment 4. Further guidance on determining if resources are exempt and documenting that determination is offered in [Chapter 4](#).

2-3.4 IDENTIFICATION OF HISTORIC PROPERTIES

Once the scope of identification efforts has been defined, and based on information that has already been gathered about cultural resources within the APE, it should be clear whether survey work is needed.

If additional survey is needed, Caltrans PQS determines the level of survey effort that is needed, as well as the need to conduct phased identification.

Phased identification may be necessary when the project has a number of alternatives, involves large land areas, or includes areas to which access is restricted. The latter often occurs when archaeological sites may be affected. When considering a phased approach, FHWA must approve it and an MOA is required. Also, the process needs to allow for other consulting parties and the public to adequately express their views. See [Chapter 4](#) for more discussion.

HISTORIC CONTEXTS

In order to identify resources not previously known, cultural resources specialists undertake research to develop the historic context necessary to recognize the types of resources that may be present and the locations in which they are likely to occur as well as possible areas of significance. The results of the study are presented in a historical overview of the technical reports that the cultural resources specialists prepare. The context statement presented in the historical overview leads directly to site-specific discussions of cultural resources in the APE.

Work on the historic context usually extends through the research and survey stage and is completed prior to formal evaluation of resources. The context should be developed to the extent needed to understand the resources being studied. It should be a focused and practical synthesis, providing the information needed to evaluate and compare properties within that context. [Chapter 4](#) contains more information on historic context.

NATIVE AMERICAN CONSULTATION

Identification of historic properties must be made in consultation with Native Americans. The Section 106 PA authorizes Caltrans to conduct consultation with Indian tribes, however FHWA retains ultimate responsibility for direct government-to-government consultation. [Chapter 3](#) contains guidance on consultation procedures.

FIELD SURVEYS

At the Project Study Report (PSR) stage, a walkover or a reconnaissance (windshield) survey, along with preliminary research, can provide information on the likelihood of historic properties within a given corridor for comparison among project alternatives. This preliminary work should be pursued to the extent necessary to reveal the need for specific cultural resources surveys within an APE or Project Area. See Chapter 4 [Section 4-5](#).

In practice, an archaeological survey is always conducted unless it can be shown that natural or modern processes have destroyed any potential resources, or unless the APE previously has been surveyed to appropriate standards. See [Chapters 4](#) and [5](#) for more information on when and how to conduct an archaeological survey and on how to assess the potential for buried resources.

All unevaluated buildings or structures within the APE, *regardless of date of construction*, will be considered. [Section 106 PA Attachment 4](#) allows Caltrans PQS to exempt certain specific resources from evaluation. [Chapters 4](#) and [7](#) contain more information on when and how to conduct an appropriate surveys and how to apply Attachment 4. All cultural resources within the APE that

merit recordation and, when applicable, evaluation, will be examined, recorded, and evaluated by appropriate Caltrans PQS or qualified consultants.

Survey Access and Field Safety

Surveyors need to carry copies of any rights of entry paperwork when in the field. When a property owner or tenant objects to survey activity, or if a situation appears to present any threat, surveyors must leave the property immediately.

Permits may be required for access to certain public lands. When it is necessary to enter private property, Caltrans must obtain permission from property owners. District Right of Way (R/W) staff should handle all access requirements, but R/W may delegate to cultural resources staff notifying residents when the actual field survey will take place. A single District cultural resources staff member should be designated to coordinate with R/W to get access permission for all advance studies.

Safety of employees and good relationships with the public are both prime considerations while conducting surveys or other fieldwork. All surveys and other fieldwork shall be conducted in keeping with the Code of Safe Field Practices. See Chapter 4 [Section 4-6.3](#), Chapter 5 [Section 5-3.6](#), and Chapter 6 [Section 6-9.2](#) for specific information regarding survey access and field safety. [Exhibit 2.6](#) contains relevant excerpts from the Caltrans survey manual.

2-3.5 EVALUATION OF HISTORIC PROPERTIES

Next, Caltrans PQS identify cultural resources within the APE that require evaluation. All buildings and structures within the APE and all archaeological sites that cannot be avoided must be identified, and as applicable, recorded and evaluated.

Caltrans PQS must examine buildings and structures regardless of age, ownership, or condition to determine whether they meet the criteria for exempt properties in [Section 106 PA Attachment 4](#).

RESEARCH AND FIELD WORK

Archaeologists and historical archaeologists conduct archaeological research, consult with Indian tribes and other Native Americans regarding prehistoric sites, and if necessary, conduct excavations, to evaluate archaeological resources. Architectural historians consult with local historical societies and groups, and conduct historical research and fieldwork to evaluate built-

environment resources (e.g., buildings, structures, districts, objects, and complexes).

When resources have the potential for multiple property types (such as a mining complex with buildings, structures, and archaeological sites), professional cultural resource specialists from more than one discipline work together as a team to ensure that all pertinent resource values are adequately considered.

Caltrans PQS and qualified consultants conducting evaluations apply National Register eligibility criteria (36 CFR §60.4) to each resource. Under the Section 106 PA, Caltrans makes eligibility findings on behalf of FHWA. Caltrans-prepared technical reports should state that Caltrans has determined that properties are eligible, or not eligible, for inclusion in the National Register.

Consultants, however, only *propose* eligibility findings so their documents should phrase the finding as “properties *appear* eligible” or “do not appear eligible” for inclusion in the National Register. Caltrans PQS will then change the wording in the cover letter to “properties *are* eligible” or “are not eligible” when Caltrans sends its official determination to SHPO and FHWA for concurrence.

2-3.6 DOCUMENTING IDENTIFICATION AND EVALUATION RESULTS

Under the Section 106 PA, Caltrans must consult with SHPO and concurrently notify FHWA on the results of its National Register eligibility determinations. This is typically accomplished in the HPSR.

The HPSR may contain a number of other findings that document compliance with Section 106 requirements – findings that do not require separate or additional SHPO or FHWA concurrence under the Section 106 PA:

- Establishment of the APE.
- Scope of identification efforts: results of seeking and gathering information on historic properties, including consultation with Indian tribes, Native Americans, local governments and groups, and other interested parties.
- No Historic Properties Affected: there are no historic properties (National Register listed or eligible) in the APE (provided SHPO has concurred on eligibility).
- No Historic Properties Affected: there are historic properties in the APE but there will be no effects to them.

The SHPO or FHWA may still comment on Caltrans identification efforts and APE delineation, but will rarely do so when all guidance has been properly followed. If there are questions on appropriate level of effort or items not covered in the Environmental Handbook, consult the CCSO Section 106 Branch Chief. Caltrans must concurrently notify SHPO and FHWA of a No Historic Proper-

ties Affected finding, thus such findings should be included in the HPSR whenever possible.

TRANSMITTING NATIONAL REGISTER ELIGIBILITY FINDINGS

The Section 106 PA allows Caltrans to submit all National Register eligibility studies directly to SHPO with concurrent submittal to FHWA. Caltrans must also notify Indian tribes who have been involved in the consultation process, and local governments in whose jurisdiction the project is located, and provide documentation to the tribe and local government, unless the tribe or local government has indicated it does not wish to receive such documentation. If Caltrans and SHPO agree on the determination of eligibility for a property, their joint finding constitutes a “Consensus Determination of Eligibility: for purposes of Section 106 compliance.

If Caltrans and SHPO disagree on eligibility, then Caltrans must promptly notify FHWA and the three parties will consult to resolve the disagreement within a mutually acceptable time frame. In the rare cases that an agreement is not reached, FHWA must submit the documentation to the Keeper of the National Register, requesting a “Formal Determination of Eligibility.” If an Indian tribe objects and consultation does not resolve the objection, the tribe may request Council to request FHWA to a determination of eligibility from the Keeper. The Keeper’s determination is final.

Caltrans should send the documents to SHPO via certified U.S. mail, return receipt requested. Be aware, however, that there may be a lag of a few days between the time the mailroom receives the document and SHPO actually receives it and logs it in. SHPO review begins from the date it is logged in.

SHPO 30-DAY REVIEW OF ELIGIBILITY FINDING

Caltrans transmits copies of its HPSR with National Register eligibility determinations to SHPO for review and concurrently provides copies to FHWA. According to the Section 106 PA, SHPO has 30 calendar days to respond from date of receipt at SHPO (date logged in). SHPO’s response may be agreement with the findings in the HPSR, but it may also be a request for additional information, in which case the 30-day time limit is no longer applicable to supplemental submittals ([Section 2-4.7](#) contains further information on the review process). It is therefore advisable for the district to wait for the SHPO letter before proceeding with the next steps under Section 106. FHWA has determined that, because of NEPA requirements, the SHPO response letter must be included in a project’s draft environmental document.

2-3.7 NO HISTORIC PROPERTIES AFFECTED

Once all historic properties within the APE have been identified, Caltrans must determine whether the undertaking will have an effect on those properties [[36 CFR §800.4\(d\)](#)]. A finding of No Historic Properties Affected is appropriate when the undertaking will have no effect on historic properties, as defined in [36 CFR §800.16\(i\)](#).

The No Historic Properties Affected finding applies when either

- The APE does not contain any historic properties at all, or
- Historic properties are present but the undertaking will not alter the characteristics that may qualify them for the National Register.

If this finding is appropriate, Section 106 compliance is concluded.

It is important to consider the following factors determining whether there will be an effect on historic properties within the APE:

- An effect does not have to be negative to be an effect.
- To have an effect, the undertaking must have the *potential to alter the characteristics that qualify the property for inclusion in the National Register*.
- The potential alteration does not have to be certain.
- Effects do not need to be direct and physical.
- Consideration should be given to changes that may occur in the reasonably foreseeable future.

If Caltrans finds there are historic properties that may be affected by the undertaking, Caltrans shall apply the Criteria of Adverse Effect. If objections have been raised about Caltrans' No Historic Properties Affected finding and they have not been resolved, Caltrans and FHWA should apply the Criteria of Adverse Effect and work towards resolving the objection.

2-3.8 EFFECT DETERMINATIONS

The regulations at 36 CFR §800 require FHWA to determine if the undertaking will have an effect on historic properties. If there will be an effect, the agency will make one of the following findings:

- No Adverse Effect (NAE),
- No Adverse Effect with Standard Conditions (NAE-SC), or
- Adverse Effect (AE).

[Section 2-5.3](#) contains guidance on the process for documenting these findings and consulting with SHPO.

ASSESSMENT OF ADVERSE EFFECT

To assess effects, Caltrans PQS apply the Criteria of Adverse Effect [[36 CFR §800.5\(a\)\(1\)](#) and (2)] to determine whether the proposed activity will adversely affect properties listed in or determined eligible for listing in the National Register.

The finding of No Adverse Effect applies when there will be an effect, but the effect will not alter any of the characteristics that qualify the historic property for the National Register in a manner that would diminish any of the property's seven aspects of integrity. A finding of No Adverse Effect with Standard Conditions is appropriate when certain specific conditions are imposed on the undertaking (see below).

Aspects of Integrity	
Location	Workmanship
Design	Feeling
Setting	Association
Materials	

According to the criteria, an adverse effect occurs when the integrity of the historic property may be diminished by the undertaking through alteration of the characteristics that qualify the property for the National Register. Such alteration can be caused directly as a result of the undertaking or as an indirect consequence.

Adverse effects include, but are not limited to:

- Physical destruction, damage, or alteration, including moving the property from its historic location.
- Isolation from or alteration of the setting.
- Introduction of intrusive elements.
- Neglect leading to deterioration or destruction.
- Transfer, sale, or lease from federal ownership.

NO ADVERSE EFFECT

A finding of No Adverse Effect is appropriate when:

- None of the undertaking's anticipated effects meet the Criteria of Adverse Effect.
- Caltrans and FHWA, after consultation, modify the undertaking or agree to conditions that will avoid adverse effects.

There are two standard conditions that will avoid adverse effects under the Section 106 PA:

- 1) Rehabilitation according to *Secretary of the Interior's Standards for Treatment of Historic Properties*; and

2) Protection by designation of an Environmentally Sensitive Area (ESA).

When either of the standard conditions is imposed on an undertaking, the formal finding to conclude Section 106 would be “No Adverse Effect with Standard Conditions.” Under the Section 106 PA, neither SHPO nor FHWA need to review this finding, but they must be notified of the finding.

The first standard condition is used primarily for buildings and structures. Where adverse effects are avoided through rehabilitation, the plans must be reviewed by, or under the direct supervision of, a Principal Architectural Historian with the requisite experience. See the guidance in Chapter 1 [Section 1-3.3](#) – Architectural History and History. The Historical Architectural Specialty Branch at Headquarters is available for assistance and guidance when considering this approach.

The second standard condition is used primarily for archaeological sites. When employing an ESA to avoid adverse effects, there are two major factors to consider. First, when using an ESA to protect a site from adverse effects, it is permissible to assume that an archaeological site is eligible for the National Register without conducting full evaluation studies, that is, no excavation is needed. Where this approach is used, Caltrans states that a property is considered eligible “for the purposes of the undertaking.” This avoids any unintended implications that would result in a property being listed in the California Register. Second, an ESA Action Plan must be prepared. [Section 2-4.3](#), [Section 106 PA Attachment 5](#), [Chapter 5](#), and [Exhibit 2.7](#) contain additional details on implementing ESAs and what should be included in an ESA Action Plan.

Caltrans may also propose a NAE finding that does not employ either of the two above standard conditions. In this situation, Caltrans submits the proposed finding to FHWA for review, and FHWA then forwards it to SHPO. If there are any disagreements on the finding, the parties must consult to reach agreement.

ADVERSE EFFECT

An undertaking is considered to have an adverse effect when *any* aspect of an undertaking meets one or more of the Criteria of Adverse Effect. Caltrans also may make a finding of Adverse Effect after a consulting party has indicated its disagreement with a NAE finding, or when SHPO objects to a finding of No Adverse Effect that employs other than standard conditions.

An undertaking may have no effect on some properties, but an adverse effect on others. In this situation, the finding for the undertaking would be Adverse Effect. For the undertaking as a whole, there is one finding of effect.

Under the Section 106 PA, Caltrans proposes to FHWA a finding of Adverse Effect and FHWA then consults with SHPO. This is usually accomplished through a Finding of Effect document. Once Caltrans, FHWA, SHPO, and consulting parties reach an agreement on the Adverse Effect finding, they move to the next step, resolving adverse effects. The purpose of this step is to continue consulting to reach agreement on measures that will enable the undertaking to proceed. The goal is to find measures that avoid or reduce harm to historic properties. Note that an adverse effect finding may trigger FHWA Section 4(f) policy that requires FHWA legal sufficiency review.

2-3.9 RESOLUTION OF ADVERSE EFFECTS

When there is an adverse effect, FHWA, or Caltrans under FHWA direction, consults with SHPO on ways to avoid or reduce the adverse effect. FHWA must invite Indian Tribes to be consulting parties under certain circumstances. [Chapter 3](#) contains more guidance for involving Indian tribes in the resolution of adverse effects. Specifically, the regulations provide that the federal agency shall consult with Indian tribes “to develop and evaluate alternatives or modification to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties” [[36 CFR §800.6\(a\)](#)]. FHWA also must invite local governments with jurisdiction over the area in which the effects of an undertaking may occur to be consulting parties [[36 CFR §800.2\(c\)\(3\)](#)].

FHWA, in consultation with SHPO *may* invite other groups and individuals to join the consultation if they have a demonstrated interest in the undertaking, and have submitted a written request to FHWA to join the consultation. Demonstrated interest may include legal or economic relation to the undertaking or affected historic properties or concern with the undertaking’s effects.

In the rare situation that FHWA and SHPO are unable to resolve the adverse effects, they must invite Council to participate in the process.

CONSULTATION TO DEVELOP AGREEMENT

The consulting parties must make a good-faith effort to find acceptable ways to avoid or reduce the effects on historic properties. FHWA, or Caltrans under FHWA direction, gathers needed documentation, informs the public about the undertaking through its public involvement procedures, and works with the consulting parties to find a solution. The parties may agree to accept adverse effects when no reasonable alternatives are available and when the undertaking is in the best public interest despite the adverse effects on historic properties.

MEMORANDUM OF AGREEMENT

When FHWA and SHPO have reached an agreement for avoiding, reducing, mitigating, or accepting adverse effects on historic properties, they sign a

Memorandum of Agreement (MOA). Caltrans shall be a concurring party to, or a signatory of, the MOA whenever it is required to perform any action as part of the agreement. See [Exhibit 2.10](#) for additional guidance on MOAs.

The MOA serves three important functions in the Section 106 process:

- It completes the process for a project on which an adverse effect will occur.
- It specifies the measures that will be implemented to mitigate, avoid, or reduce adverse effects on historic properties.
- It establishes responsibility for implementing each of the measures.

In situations where the adverse effect is to an archaeological property that is significant exclusively under National Register Criterion D, Caltrans may follow the Data Recovery Plan (DRP) proposal in [Section 106 PA Attachment 6](#) in order to resolve adverse effects. FHWA and Caltrans both must enter into an MOA with SHPO to ensure the provisions of the DRP will be carried out as specified.

For most Caltrans projects, the MOA will be a two-party agreement between FHWA and SHPO, with Caltrans as a concurring party. Note that an Indian tribe, local government, or other interested individuals may be invited to be concurring parties to the MOA, if FHWA so decides. Unless they are assigned specific duties under the MOA, their failure to sign the MOA does not invalidate it and does not stop the MOA from being implemented.

In rare circumstances the Council may be involved in the resolution of Adverse Effects and would also sign the MOA. This would happen when FHWA, SHPO, and Caltrans are unable to reach agreement among them and Council has been asked to participate. Whether or not the Council is involved, FHWA must provide a copy of the MOA to the Council for inclusion in their files for documentation of the agency's implementation of Section 106.

2-3.10 IMPLEMENTATION OF AGREEMENT

If the Section 106 process has resulted in a signed MOA, FHWA proceeds with its project according to the terms of the MOA. Caltrans and any other parties with responsibilities under the MOA usually carry out the mitigation measures after the final environmental document is approved but before or during construction (See [Exhibit 2.3](#) for additional information on Caltrans WBS codes and funding sources). Within 90 days after completing all the required mitigation measures under the terms of an MOA, Caltrans reports to those who signed the MOA, usually FHWA and SHPO, on actions completed.

2-3.11 COUNCIL FAILURE TO AGREE AND TERMINATION

In the rare instances when the MOA signatories and/or consulting parties fail to agree on terms for an MOA, the consultation may be terminated. In the event of termination, FHWA shall request Council comments on the undertaking. The head of FHWA must take into account Council's comments, after which FHWA makes the final decision about whether or how to proceed with its proposed activity. After making its decision, FHWA notifies Council.

Council does not have veto power over a project. Council comments go to the head of the federal agency, however, and there can be a significant delay to final agency approval of projects.

2-4 SPECIAL CONSIDERATIONS

2-4.1 CONSIDERING ALTERNATIVES

Preliminary studies, such as walkovers and reconnaissance surveys, should be undertaken early in the planning and development process, at the Project Study Report (PSR) stage. In some situations, these preliminary studies will be sufficient to indicate that the environmental consequences of some alternatives warrant dropping them from further consideration without expending additional effort.

Complete cultural resources surveys, Native American consultation, and any other necessary identification studies are undertaken for each project alternative formally considered in the environmental document.

Each alternative should be studied to a roughly equal degree, in comparable detail.

Studies that are destructive by nature (e.g., archaeological test excavations) may be postponed until a preferred alternative has been selected, unless all proposed alternatives would affect a particular resource. Postponing test excavations pending selection of a preferred alternative avoids unnecessary damage to the resources, in accordance with Caltrans and FHWA policy.

When the draft environmental document is prepared, each alternative is presented in roughly equal detail, and the proposed treatment of each historic property that would be affected by each alternative is described in an appropriate level of detail. The SHPO's views on eligibility and effect should be included in the draft environmental document. A range of suitable mitigation options, rather than a precise commitment, may be presented if mitigation plans are not yet complete. Note that the above information is required to be

included in the draft environmental document before FHWA can process it (i.e., allow it to be circulated for public review).

2-4.2 EMERGENCY UNDERTAKINGS

Section 106 responsibilities are not waived in emergencies, but alternative procedures outlined in 36 CFR §800.12 may be followed when the work proposed is an essential and immediate response to an officially declared disaster or state of emergency, and it is *implemented within 30 days*. FHWA may choose to use [36 CFR §800.12](#) in lieu of [23 CFR 668](#) for emergency undertakings implemented within 30 days or for rare instances of emergency undertakings not included in 23 CFR 668.

DECLARED EMERGENCY

An emergency or a disaster must be officially declared by the President or the Governor in order to invoke 36 CFR §800.12 procedures. Emergency situations also occur when there is an imminent threat to public health or property; rescue and salvage operations to preserve life and property are exempt from review.

FHWA will notify SHPO and Council of the emergency undertaking and give them the opportunity to comment within seven days, if circumstances permit.

If the work will not be implemented *within 30 days* of the emergency or disaster, the undertaking must go through the standard Section 106 process or the Section 106 PA. SHPO and the Council have indicated that they are willing to accommodate non-routine processing and to expedite reviews; however, they will look for consideration of historic properties in project planning.

The District Environmental Branch should immediately contact FHWA, or the federal agency involved, to determine appropriate procedures and initiate action. Some federal agencies may be able to make exceptions to their regular permitting process in a declared emergency. For example, permit requirements could be waived for repairs or replacement in kind, or a permit could be issued after the fact.

2-4.3 ENVIRONMENTALLY SENSITIVE AREAS

Environmentally Sensitive Areas (ESAs) are locations of identified cultural, biological, or other resources that are to be protected by avoidance during Caltrans activities. Where establishment of an ESA protects an archaeological property, Caltrans may consider such properties National Register eligible for the purposes of the undertaking without conducting subsurface testing or surface collection. Caltrans PQS must establish the ESA according to provisions

of [Section 106 PA Attachment 5](#). In this situation Section 106 compliance would be concluded with a finding of “No Adverse Effect with Standard Conditions” (see [sections 2-3.7](#) and [2-5.3](#) for further guidance on ESAs and effect findings). If other values are attached, consultation with SHPO may be necessary to determine if the ESA is sufficient to protect the property from adverse effects.

Careful use of ESAs is imperative:

- Failure to honor an ESA during construction *will* result in reopening the Section 106 process, causing project delays and jeopardizing continuing use of ESAs in general and/or loss of federal-aid funds.
- Effective protection of a designated ESA may require such an extensive commitment of staff time that site evaluation and treatment might be a more prudent course of action.

Generally, ESAs are designed for protection from casual, inadvertent damage, peripheral to the project. However, as designation of an ESA suggests a potential for project effects to the site, any site protected by an ESA must be included entirely within the APE.

[Exhibit 2.7](#) on ESA Action Plans contains guidelines and format instructions.

2-4.4 POST-REVIEW DISCOVERIES

Post-review discoveries most commonly occur when previously unidentified archaeological sites are uncovered during construction. However, other previously unknown resources could be discovered, or a project could be found to have unexpected effects on known historic properties.

If a post-review discovery occurs, work in the area of the resource must stop immediately. Caltrans must immediately notify FHWA, SHPO, and any Indian tribes as appropriate.

If a project has substantial potential for post-review discoveries, Caltrans is encouraged to develop a plan to deal with them ([36 CFR §800.13\[a\]](#) and Section 106 PA [Stipulation XV](#)). Planning for discoveries is undertaken as part of Section 106 consultation with SHPO (see [Chapter 5](#) for further details on planning for and managing discoveries). Usually a signed MOA implements a treatment or discovery plan. Then, when discoveries are made, Caltrans need only proceed according to that plan.

When there is no plan in place and an undertaking affects a previously unidentified property or affects a known historic property in an unanticipated manner, Caltrans shall promptly stop construction activity near the property and implement all reasonable measures needed to avoid, minimize, or mitigate further harm to the property. If the discovery involves a newly identified property,

Caltrans may assume it to be National Register eligible for the purposes of Section 106.

Once a discovery is made, the Section 106 PA provides for the following actions:

- Caltrans notifies FHWA and SHPO within 48 hours.
- Caltrans notifies Indian tribes and/or Native American groups that may attach religious or cultural significance to the property within 48 hours.
- Notified parties have 72 hours to respond to Caltrans with comments.
- Caltrans must consider their comments in determining an appropriate course of action.
- Caltrans may then carry out the determined course of action, with on-going consultation as appropriate.
- If a National Historic Landmark is affected, Caltrans includes the Secretary of the Interior and the Council in the notification process (See [Section 106 PA Stipulation XV](#)).

2-4.5 PROTECTING NATIONAL HISTORIC LANDMARKS

National Historic Landmarks (NHLs) are properties of the highest level of national significance. Under Section 110(f) of the National Historic Preservation Act, federal agencies must give special protection to NHLs that may be affected by federal undertakings. Any NHLs within a project area must receive additional consideration, as described in [36 CFR §800.10](#).

When an undertaking may adversely affect a NHL, the Council must be included as a consulting party to an agreement and must report the outcome of the Section 106 process to the President, Congress, and Secretary of the Interior.

2-4.6 PUBLIC PARTICIPATION

The goal of public participation in the Section 106 process is to ensure that interested persons are able to learn about and voice their views on the potential effects of a project. Interested persons are defined as organizations and individuals that are concerned with the effects of an undertaking on historic properties. Caltrans shall document evidence of coordination with all interested persons and the results of that coordination in its Section 106 documents.

During the identification and evaluation stage, Caltrans PQS identify and invite interested members of the public to provide information on cultural resources. Caltrans PQS must notify all consulting parties and members of the public who express an interest in the proposed project during pre-field research of the results of the identification phase, even when no historic properties are

found within the APE. When historic properties are found that may be subject to project effects, persons who have expressed an interest may want to continue participation. Consultation must protect the confidentiality or sensitivity of cultural resources.

Public participation in the Section 106 process may be achieved by using Caltrans' procedures for compliance with the National Environmental Policy Act (NEPA) and Caltrans project development process. Participation may include public meetings, hearings, or newspaper notices, although the degree of effort and timing may vary. Public comments and opinions and responses to those comments must be included in the documentation for the public participation process. Usually this involves attaching contact letters to the HPSR and summarizing any responses in the HPSR.

CONSULTING PARTIES

FHWA shall involve the following parties to participate as consulting parties in the consultation to resolve Adverse Effects to historic properties:

- SHPO [[36 CFR §800.2\(c\)\(1\)](#)].
- Tribal Historic Preservation Officer (THPO) for tribes that have assumed SHPO responsibilities when affected historic properties are on tribal lands, or representative of a federally recognized Indian tribe when an undertaking will affect Indian lands or properties of historical or cultural value to the tribe on non-Indian lands [[36 CFR §800.2\(c\)\(2\)](#)].
- Indian tribes, when the undertaking involves historic properties of religious or cultural significance to the tribe.
- Head of a local government, when the undertaking may affect historic properties within the local government's jurisdiction (its area of authority or control) [[36 CFR §800.2\(c\)\(3\)](#)].
- Applicants for federal assistance (such as Caltrans), and applicants or holders of grants, permits, or licenses that are subject to Section 106 review [[36 CFR §800.2\(c\)\(4\)](#)].

Upon request and in consultation with SHPO, FHWA may invite others to participate as consulting parties in the consultation to resolve adverse effects to historic properties. Individuals and organizations with a demonstrated interest in the undertaking, due to their legal or economic relation to the undertaking or the affected historic properties, or their concern with the undertaking's effects on historic properties are in this category [[36 CFR §800.2\(c\)\(5\)](#)]. This may include for example owners who hold title to real property within an undertaking's APE, private historic preservation organizations, or non-federally recognized Indian tribes. FHWA must consider all written requests of individuals or organizations to participate as consulting parties.

If a proposed project may affect federal or state lands, FHWA shall contact the appropriate land-holding agencies for information regarding historic properties on their land and shall formally invite the agencies to be parties to any subsequent actions.

U.S. FOREST SERVICE AND NATIONAL PARK SERVICE AS CONSULTING PARTIES

The U.S. Forest Service and the National Park Service have requested to be consulting parties on all projects that affect historic properties on their lands. For such projects, Caltrans shall:

- Request information from the appropriate National Forest or National Park to assist in the identification of historic properties.
- Notify both the Forest Supervisor and the Forest Service Regional Forester or the National Park Superintendent and the National Park Service Regional Director of No Historic Properties Affected findings.
- Consult with the Regional Forester and Forest Supervisor or with the National Park Superintendent and National Park Service Regional Director on Adverse or No Adverse Effect determinations.
- Routinely invite the Regional Forester or the National Park Service Regional Director to be a consulting party for any project in which adverse effects will occur on historic properties in that jurisdiction.

2-4.7 SHPO REVIEW TIMES

Section 106 regulations (36 CFR §800) specify review times for various stages in the process, but they should not be misinterpreted or underestimated. With the Section 106 PA, SHPO has agreed in principle to respond to Caltrans determinations of National Register eligibility within 30 days. Below are some circumstances that can affect review times:

- The SHPO interprets the 30-day review period as beginning when a document is received in the office, date-stamped and logged. The review period ends when SHPO signs the response letter. Allow for additional mail and handling time.
- Review time lengthens if SHPO must request additional information or questions a finding. Clear, logical, well documented, and well-justified findings help reduce delays.

It is best to start the process early, prepare adequate documents, and schedule enough time to allow for any complications or delays. It is important to remember that individual projects may be subject to higher levels of scrutiny and associated delays. FHWA policy is that Section 106 compliance must be

documented as part of FHWA's NEPA compliance, thus the SHPO response letter must be included in the final environmental document for each project.

2-4.8 SECTION 4(F) AS IT RELATES TO SECTION 106

“USE” OF HISTORIC PROPERTY

Section 4(f) of the 1966 Department of Transportation Act prohibits use of land from any historic property on or eligible for the National Register unless there is no feasible and prudent alternative to the use of land from the affected historic property *and* the project includes all possible planning to minimize harm. The implementing regulations for Section 4(f) appear in 23 CFR §771. FHWA has issued “[Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#),” which can be downloaded but is a very large document. Prepared as part of the environmental document, a Section 4(f) evaluation may be required when there is a finding of Adverse Effect under Section 106 or a No Adverse Effect when there is a full or partial take of the historic property or there are other indirect effects.

FHWA determines whether Section 4(f) applies to specific projects. Section 106 mitigation will normally support the finding under Section 4(f) that all possible measures to minimize harm have been incorporated into the project.

FHWA may determine that Section 4(f) does not apply to restoration, rehabilitation, or maintenance of historic transportation facilities when:

- FHWA concludes the work will not adversely affect the historical qualities of the facility.
- SHPO and Council do not object to this finding.

Section 4(f) does not apply to archaeological sites that are determined important chiefly for their information value and have minimal value for preservation in place. This principle applies regardless of whether data recovery is undertaken. If an archaeological site is eligible for values beyond its information, FHWA will consider whether 4(f) applies in a case-by-case basis. While disturbances to archaeological sites known or likely to have human burials would constitute an adverse effect under Section 106, such disturbance would not necessarily require a Section 4(f) evaluation. The key is whether the site merits preservation in place, not what specific values are present.

Where a project involves an archaeological site eligible for values beyond information, Caltrans should ask FHWA as early as possible to determine whether they consider a 4(f) situation to exist. FHWA would then decide if a Section 4(f) analysis is warranted.

The Section 4(f) evaluation is usually presented in the draft environmental document, but it may appear as a separate document. It must demonstrate why

the alternatives to avoid a Section 4(f) property are not feasible and prudent, and describe the measures that will be taken to minimize harm to the Section 4(f) property.

Two nationwide programmatic Section 4(f) evaluations apply to historic properties and serve mainly to streamline the FHWA process. *These programmatic Section 4(f)s do not change the substantive requirements of Section 4(f), that is, the evaluation of avoidance and all possible measures to minimize harm.* These can be downloaded from FHWA's Environment web site.

- Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of [Historic Bridges](#), which allows demolition of historic bridges if they are not National Historic Landmarks, there is no prudent and feasible way to save the bridge, and FHWA, SHPO and the Council have reached agreement on the project under Section 106.
- Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with [Minor Involvements](#) with Historic Sites, which pertains to undertakings with only minor effects on historic properties, which result in No Historic Properties Affected or No Adverse Effect findings under Section 106, SHPO agrees in writing to the finding, and Council does not object to the finding of No Adverse Effect.

These programmatic Section 4(f) evaluations are contained in the Federal Register 48[163], August 22, 1983, pp. 38135-38140; and 52[160], August 19, 1987, pp. 31111-31119.

CONSTRUCTIVE USE

Section 4(f) also may apply when the effects are not direct impacts (or direct takes); such impacts are called a "constructive use." Constructive use means there are proximity (or non-direct) impacts to a historic property that is so severe that the property's features or attributes are substantially impaired. Adverse effects that are proximity impacts (such as visual, audible, or atmospheric effects) may or may not be considered constructive use under Section 4(f). It would depend on the magnitude of the effect and whether the proximity impact causes substantial impairment to the qualities that make the property eligible for the National Register.

FHWA's Washington, DC office determines whether proximity impacts constitute constructive use under Section 4(f). Such a determination requires approximately 6 months to process through FHWA. The DEBC should allow for that extra time when scheduling preparation of the environmental document.

2-5 SECTION 106 DOCUMENTS

2-5.1 INTRODUCTION

Two primary documents serve as compliance vehicles for the Section 106 process: the Historic Property Survey Report (HPSR) and the Finding of Effect (FOE). See [Exhibit 2.8](#) and [Exhibit 2.9](#), respectively. The HPSR is a summary document for reporting the scope of identification efforts and evaluation of cultural resources with the supporting technical reports containing the detailed analyses appended to it. A FOE is prepared subsequent to the HPSR and is used to present an analysis of effect determinations when a project may affect historic properties. See [Exhibit 2.11](#) for the number of report copies to distribute and [Exhibit 2.12](#) for sample transmittal letters to SHPO and FHWA.

2-5.2 HISTORIC PROPERTY SURVEY REPORT

FHWA and Caltrans use the HPSR as the primary document to fulfill several requirements of 36 CFR §800. It documents FHWA's and Caltrans efforts to identify historic properties; evaluate the National Register eligibility of cultural resources, when there are resources that need to be evaluated; and document a finding of No Historic Properties Affected, if applicable.

In very rare instances, with prior FHWA approval, it may be possible to streamline the Section 106 process for simple projects with no potential for disagreement or controversy by using the HPSR to document No Adverse or Adverse Effect findings. However, in almost all cases, such effect findings should be submitted in a separate Finding of Effect document, after the SHPO has concurred on the scope of identification efforts and adequacy of the evaluation efforts.

The HPSR serves a number of functions, in addition to being the cover document for the technical reports. The HPSR:

- Summarizes the identification efforts, which includes documenting the APE.
- Summarizes the National Register eligibility conclusions for cultural resources described and evaluated in the attached reports and indicates that these supporting documents contain full technical details.
- Provides evidence of coordination with local Native American groups, local governments, historical societies, and other interested persons.
- Provides evidence that FHWA and Caltrans have satisfied federal and state environmental laws regarding the identification of cultural resources.
- Analyzes a finding of No Historic Properties Affected when there are no historic properties within the APE or there is no effect on historic properties.

- Analyzes a finding of No Adverse Effect with Standard Conditions when an ESA is imposed on the undertaking, or properties are subject to rehabilitation according to the “Secretary of the Interior’s Standards for the Treatment of Historic Properties.”
- Requests SHPO’s comments and concurrence on the National Register eligibility determinations contained in the HPSR.
- Requests SHPO’s comments and concurrence on findings of No Historic Properties Affected or No Adverse Effect with Standard Conditions when they are included in the HPSR.

Because the majority of Caltrans projects for which HPSRs are prepared do not affect historic properties, this document, with its attachments, is typically the only document for Section 106 compliance. Because the HPSR can address multiple issues in a single document, it can consolidate and reduce the number of documents needed for SHPO review, and can thus help reduce overall preparation, transmittal, and review time.

An HPSR can vary greatly in length and complexity because the studies necessary to identify cultural resources will also vary, depending on the project and the types of resources within the APE or Study Area. For example, cultural resources studies must be conducted when there are buildings or structures present. An archaeological study will be undertaken when a project would disturb the ground, but may not be required when the ground within the proposed project area is completely disturbed by prior modern construction. See [Exhibit 2.3](#) for a rough estimate of the length of time needed to complete the variety of cultural resources studies that might be necessary.

The body of the report can be very brief when summarizing attached technical reports. However, when the HPSR also is used to convey a No Historic Properties Affected finding, it must contain all information necessary to describe and support the finding.

The HPSR’s content should be carefully constructed to ensure that it adequately serves necessary functions while limiting redundancies and simplifying the review process. For example, if voluminous sets of identical maps accompany each attached technical report, duplicates can be removed before submittal to SHPO. Tabs can also be used to guide reviewers to the various sections or attachments.

[Exhibit 2.8](#) provides an outline of the format and instructions for preparing HPSRs and contains the format for the Short Form HPSR that may be used instead of a narrative text.

HPSR TYPES OF FINDINGS

There are two types of HPSR findings, depending upon the presence and type of cultural resources within the APE. The “Findings – HPSR to File” is fairly straightforward and simple and is used only in very specific situations to report that there are no cultural resources in the APE; those situations are outlined below. The “Findings – HPSR to SHPO” is used to report the existence of cultural resources that require evaluative efforts beyond identification, as described in the subsequent section.

Caltrans PQS or consultants prepare the HPSR and supporting technical reports. For “Findings – HPSR to File,” file the HPSR in district files and submit a copy to FHWA. For “Findings – HPSR to SHPO,” that is, properties are evaluated whether or not they are determined eligible, Caltrans concurrently transmits the “Findings - HPSR to SHPO” and FHWA. Caltrans’ memo transmitting the HPSR requests SHPO’s comments on the determinations of eligibility findings for any evaluated cultural resources in the APE.

HPSR: FINDINGS – HPSR TO FILE

When there are no cultural resources of any kind in the APE, or the APE contains no resources that require further study because they are exempted properties, in the Properties Identified section of the HPSR check the box that says “No cultural resources in APE or resources as described in Section 7 below.” Also check the appropriate boxes in the Findings – HPSR to File section of the HPSR, certifying that no historic properties are located within the APE.

Appropriate Uses of HPSR “Finding – HPSR to File”

This Finding may be used when there are:

- No archaeological sites within the APE, or only sites that were previously determined not eligible for inclusion in the National Register.
- Buildings, structures, and other non-archaeological properties within the APE, but *only*:
 1. Properties meeting the criteria for Properties Exempt from Evaluation in Section 106 PA Attachment 4.
 2. Properties previously determined not eligible for inclusion in the National Register.
- Bridges in the APE that are listed as Category 5 in the Caltrans Historic Highway Bridge Inventory and were 50 years old or older when they were evaluated

If there are *any* archaeological sites within the APE, the “Findings HPSR to SHPO” section must be completed and sent to SHPO regardless of disturbance

or apparent lack of research values. However, if SHPO has already determined the site is not eligible for the National Register under any criteria and the SHPO concurrence letter is attached to the HPSR, the “Findings – HPSR to File” section may be completed.

This type of HPSR finding must include the following supporting documentation, as appropriate:

- Signature in the appropriate box by an appropriate level PQS that all cultural resources in the APE qualified for treatment under Section 106 PA Attachment 4.
- Evidence of SHPO’s previous concurrence on ineligibility, such as a copy of the concurrence letter, or the Keeper of the National Register’s formal determination of ineligibility (the Keeper’s “E.O. 11593” Form Letter).
- A copy of the Bridge Inventory sheet listing the Category 5 bridges. The version available on-line through the Division of Environmental Analysis web site also includes construction dates that evidence the bridge was 50 or more years old when evaluated.

Use of the HPSR with “Findings - HPSR to File” applies only to projects processed through either a Negative Declaration/Finding of No Significant Impact (ND/FONSI) or an Environmental Impact Report/Environmental Impact Statement (EIR/EIS). [Exhibit 2.13](#) contains procedures to follow for Section 106 compliance on Categorical Exemption/Categorical Exclusion (CE) projects.

Processing the “Findings – HPSR to File” HPSR

District PQS or consultants prepare the document. Under the Section 106 PA, for projects handled under an ND/FONSI, the Caltrans PQS’s review for approval signature and the DEBC’s approval signature completes the Section 106 process. As there are no properties for SHPO to evaluate, the report does not get transmitted to SHPO. The environmental document summarizes the results of the findings and includes a statement that no historic properties were identified within the APE.

The District Environmental Branch retains the signed HPSR and supporting documentation in its project files. The District HRC sends one copy of the completed HPSR with supporting documentation to FHWA for their NEPA compliance requirements, to the CCSO Section 106 Branch Chief for filing, to any consulting parties, and one copy to the appropriate Information Center.

HPSR: FINDINGS – HPSR TO SHPO

When cultural resources that require evaluation are present in the APE, *whether eligible or not*, the HPSR “Findings HPSR to SHPO” section is com-

pleted and the HPSR submitted to SHPO for concurrence on the eligibility findings. These HPSR findings are used even if the resources present will not be affected by the proposed project. The presence of any archaeological site within the APE also that the HPSR be transmitted to SHPO.

When to use HPSR with “Findings – HPSR to SHPO”

This section of the HPSR is completed when the APE contains:

- Historic properties listed in or previously determined eligible for listing in the National Register of Historic Places.
- Any built-environment cultural resources that require evaluation.
- Any archaeological sites.
- Any Native American cultural site.

Under most circumstances, National Register eligibility evaluations for built-environment resources (such as buildings, structures, and districts) are included in the Historic Resources Evaluation Report (HRER). Prehistoric archaeological sites are evaluated in an Archaeological Evaluation Report (AER), while historical archaeological sites are evaluated in an HRER. These evaluation documents are attached to the HPSR.

On occasion, a “HPSR to SHPO” finding may also be used when archaeological sites in the APE will require Phase II test excavations to determine their National Register eligibility. In these circumstances, the HPSR documents the presence of potentially eligible sites within the APE and states that archaeological testing to determine eligibility will be undertaken if the selected alternative will affect the sites and the project cannot be redesigned to avoid them. After a test excavation is completed, a Supplemental HPSR must be submitted with the test excavation report.

When the HPSR identifies historic properties that can be avoided through redesign of the project or there is no effect, the HPSR can document a No Historic Properties Affected finding. If establishing ESAs can protect archaeological sites or buildings are proposed for rehabilitation, the HPSR can also document a No Adverse Effect with Standard Conditions finding.

Processing the “Findings – HPSR to SHPO” HPSR

Under the Section 106 PA, these HPSRs and Supplemental HPSRs are processed as follows:

The District HRC transmits one copy of the HPSR and attached documentation to SHPO and one copy to the FHWA Division Administrator. The HRC should send one copy to consulting parties (such as Indian tribes or local governments) at this time so they have an opportunity to convey any comments to SHPO. The Caltrans letter to SHPO transmitting the HPSR will request

SHPO's concurrence on Caltrans determinations of eligibility made on behalf of FHWA. If pertinent, the letter may state Caltrans has made a finding of No Historic Properties Affected or No Adverse Effect with Standard Conditions and is transmitting that finding in accordance with the Section 106 PA. In order to reduce paperwork, if there are state-owned historical resources within the APE, the HPSR and the transmittal memo will also request SHPO to add the state-owned historical resources to the Master List of Historical Resources pursuant to [PRC §5024\(b\)](#). (See [Exhibit 2.12](#) on sample transmittal letters.)

Note that under the Section 106 PA, Caltrans is acting under the authority of FHWA. In addition, Caltrans is given the authority to determine the APE and scope of identification efforts, but SHPO and FHWA reserve the right to comment on both. SHPO's response may be concurrence, but may also be a request for additional information.

In the rare event that Caltrans, FHWA and SHPO do not reach agreement on determination(s) of eligibility, FHWA must obtain a formal determination of eligibility from the Keeper of the National Register, whose determination is final.

Once SHPO has concurred on Caltrans eligibility determinations and the HPSR is finalized, the District HRC sends a copy of the HPSR and transmittal letter to the CCSO Section 106 Branch Chief for filing and a copy of the HPSR to the appropriate Information Center. The District HRC should notify any consulting parties of SHPO's concurrence. If the HPSR included state-owned resources, the District HRC also notifies the Chief, Built Environment Preservation Services Branch (BEPS) in CCSO of the finding for the state-owned resource(s), including the resource's location by county, route, Kilopost, and post mile and SHPO's comments on eligibility.

Note that for FHWA's NEPA compliance, a copy of the SHPO letter concurring on eligibility must be included in the draft environmental document. At the conclusion of consultation, SHPO's letter is attached as an exhibit to the environmental document. A statement summarizing the consultation is also included in the environmental document.

SUPPLEMENTAL HPSR

It is sometimes necessary to prepare a Supplemental HPSR to account for project-related factors not treated in the original HPSR.

Common reasons for preparing a Supplemental HPSR include the following:

- A project APE has been revised or enlarged, resulting in the need to consider cultural resources not covered in the original HPSR.
- A Phase II or evaluation report on an archaeological site has been completed, providing eligibility information that was not available in the original HPSR.

- The original HPSR requires revision because the project has changed, there is a need for an environmental reevaluation, or there have been changes to a previously evaluated cultural resource.

A Supplemental HPSR follows the general format of the HPSR and includes all pertinent new or revised technical documents. It presents abbreviated information regarding the project and summarizes the findings of the original HPSR, but it will focus upon the results of identification and evaluation efforts within an expanded APE or upon the changed conditions that led to preparation of the Supplemental HPSR. If the change involves archaeological sites that have been subjected to Phase II excavations to assess eligibility, the AER will be attached to the Supplemental HPSR.

RELATIONSHIP OF HPSR TO CE

Projects handled as Categorical Exclusions under NEPA or Categorical Exemptions under CEQA may not require an HPSR. [Exhibit 2.13](#) contains procedures to follow for Section 106 compliance on CE projects.

NO HISTORIC PROPERTIES AFFECTED

A finding of No Historic Properties Affected is appropriate when the undertaking will have no effect on historic properties, either because none are present or the undertaking will have no effect on them. This finding is typically documented in the HPSR. Under Section 106 PA [Stipulation IX](#), Caltrans may make a No Historic Properties Affected finding, keep the documentation on file, and Section 106 is concluded. For most projects, all pertinent information will be contained in the HPSR. The Section 106 PA specifically requires Caltrans to take into account the views of Indian tribes or consulting parties when considering effect determinations, and Caltrans must provide them copies of documentation unless they request otherwise. Under the Section 106 PA, Caltrans is not required to solicit SHPO's comments on No Historic Properties Affected findings.

Caltrans notifies any consulting parties of the No Historic Properties Affected finding. Caltrans must also make the documentation available for public inspection. Members of the public or consulting parties may request copies of reports from Caltrans. Caltrans will take into account confidentiality issues when providing copies of reports. Provided issues of National Register eligibility have been resolved with SHPO, no further review of the project is required, and Section 106 is concluded.

2-5.3 FINDING OF EFFECT DOCUMENTS

Caltrans should begin to prepare the Finding of Effect (FOE) as soon as it becomes reasonably clear that the document will be needed to support release of

the draft environmental document to the public. While the responsibility for determining effect formally lies with FHWA, Caltrans prepares all effect documents for federally funded or approved Caltrans projects. FHWA uses the Caltrans-prepared FOE for its consultation with SHPO, and when applicable, Council. [Exhibit 2.9](#) contains guidance for FOE format and content.

Although a limited assessment of effects to historic properties can be included within an HPSR to support a finding of No Historic Properties Affected or No Adverse Effect with Standard Conditions, most often an FOE is prepared when:

- A project is found to have an effect on historic properties.
- Project effects, limited to No Historic Properties Affected and No Adverse Effect with Standard Conditions, were not dealt with in the HPSR.

It is advisable for the appropriate Caltrans PQS to coordinate with the FHWA Engineer on project effects and possible mitigation measures prior to finalizing the FOE. If state-owned historical resources are within the APE, Caltrans staff must also notify the CCSO BEPS Chief and notify SHPO of this fact early in the process of drafting the FOE, in order to begin the PRC §5024.5 compliance process. (See [Section 2-7.9](#).)

In the FOE, appropriate Caltrans PQS assess a project's effect on historic properties through application of the Criteria of Adverse Effect [[36 CFR §800.5\(a\)\(1\)](#) and (2)] and propose a finding to FHWA. Working with Caltrans PQS and in consultation with SHPO, FHWA applies these criteria to determine if the project will have an adverse effect on historic properties. If an effect is found, FHWA needs to determine which of the two kinds of effects the project would have on historic properties:

- No Adverse Effect.
- Adverse Effect.

If the APE contains more than one historic property, it is possible that the project may have no adverse effect on some historic properties, but an adverse effect on others. The finding, however, will be at the highest level of effect found for any one historic property in the APE, that is, the finding is for the undertaking as a whole. For example, there are four historic properties in the APE and the project would have no effect on one historic property, no adverse effect on two historic properties and an adverse effect on one historic property. The project, overall, would have an adverse effect – the highest level of effect.

A single Finding of Effect is prepared for the project as a whole, but the report should contain a description and analysis of the individual effects to each historic property in the APE. This information may be needed for 4(f) analysis.

Caltrans PQS assess each alternative in the FOE. When an FOE assesses several alternatives, FHWA states in the document that it requests SHPO to concur on the effect of each alternative.

When the project would result in effects to historic properties, depending on the type and severity of the effect, Caltrans and FHWA may use the FOE to:

- Describe why the project effects do not meet the Criteria of Adverse Effect, in which case the document would be a Finding of No Adverse Effect (FNAE).
- Propose modification of the project or conditions that would avoid adverse effects in a FNAE document.
- Propose measures to minimize or mitigate the adverse effects, in which case the document would be a Finding of Adverse Effect (FAE).

When historic properties could be adversely affected, Caltrans prepares a FAE for FHWA. FHWA reviews it and submits it to SHPO. Per agreement in the Section 106 PA, however, Caltrans may consult directly with SHPO on the effect finding when the adverse effect is to archaeological sites eligible only under Criterion D.

Caltrans may submit the finding of Adverse Effect alone, to be followed later by a Memorandum of Agreement (MOA) with proposed mitigation measures, or a draft MOA may accompany the FAE document. On routine projects with predictable MOA stipulations, it is efficient to submit an MOA with the FAE document. For controversial projects, however, it may be prudent to submit the FAE alone, then to continue consultation with SHPO regarding appropriate mitigation measures. Caltrans and FHWA would then write the MOA following verbal agreement among the parties on appropriate mitigation measures. When the MOA is written after the FAE is submitted, FHWA's submittal of the MOA to Council must be accompanied by information on mitigation measures and project alternatives considered but rejected and the reasons for their rejection. Since the FAE should contain these discussions, submitting a copy of the FAE along with the MOA will satisfy this requirement.

If accompanied by an MOA, the finding discusses mitigation measures and project alternatives considered but rejected, with reasons for decisions. The FAE includes a summary of individual effect findings for all the historic properties in the APE, including any that were not affected.

The Caltrans letter to FHWA transmitting the FOE requests FHWA to consult with SHPO regarding the project's effects on historic properties in the APE. The District HRC sends a copy of the FOE and transmittal memo to the CCSO Section 106 Branch Chief.

When state-owned historical resources are affected, pursuant to PRC §5024.5, Caltrans must also submit notification to SHPO of this fact and ask whether SHPO will accept the FAE and MOA, if applicable, as summary documenta-

tion under PRC §5024.5. (See [Section 2-7.9](#).) The District HRC also notifies the CCSO BEPS Chief of the finding. In order to reduce paperwork and streamline compliance, SHPO notification under state policy may be accomplished at the same time as under federal policy by editing the Caltrans transmittal letter.

FHWA's review of the FOE and consultation with SHPO will result in one of the following: finding of No Historic Properties Affected, finding of No Adverse Effect, or finding of Adverse Effect. The process for making an effect determination is discussed above in [Section 2-3.7](#).

NO ADVERSE EFFECT

If there may be effects but Caltrans imposes Standard Conditions, Caltrans may propose a Finding of No Adverse Effect with Standard Conditions (FNAE-SC) according to the Section 106 PA. Standard Conditions consist of:

- Rehabilitation of historic properties according to the *Secretary of the Interior's Standards for Treatment of Historic Properties* (36 CFR Part 68), with review by, or under the direct supervision of, a Principal Architectural Historian. See guidance in Chapter 1 [Section 1-3.3](#) - Architectural History and History for guidance on the specialized experience needed to conduct this review.
- Designation and enforcement of ESAs according to Section 106 PA Attachment 5 with details described in a project-specific ESA Action Plan (see [Chapter 5](#) and [Exhibit 2.7](#) for information on ESA Action Plans).

When Caltrans proposes a Finding of No Adverse Effect with Standard Conditions, Caltrans concurrently provides copies of the finding to FHWA, SHPO, and any consulting parties as appropriate, and no further review is required. The formal finding to conclude Section 106 is "No Adverse Effect with Standard Conditions."

Caltrans may also propose a NAE finding that does not employ either of the two above standard conditions. In this situation, Caltrans submits the proposed finding to FHWA for review, and FHWA then forwards it to SHPO. Caltrans must provide concurrent notification of the finding to any consulting parties and give them 30 days to comment to FHWA.

If SHPO agrees to the finding and no objections are raised, Section 106 is concluded. According to the Section 106 PA, SHPO has 30 days to respond to the finding, either by agreeing or by asking for more information. If SHPO does not respond within 30 days after receipt of documentation, FHWA may assume concurrence in the finding. However, SHPO and FHWA may agree to extend that time on a project-by-project basis. Note that for FHWA's NEPA compliance, a copy of the SHPO letter concurring on effect must be included in the draft environmental document.

ADVERSE EFFECT

When a project will result in adverse effects to historic properties, Caltrans proposes to FHWA a finding of Adverse Effect. FHWA then consults with SHPO on the finding. Caltrans notifies consulting parties on behalf of FHWA. If disagreements arise on the assessment of effect, FHWA and SHPO, and any consulting parties, consult for no more than 30 days to resolve the disagreement. The Section 106 PA specifically provides that Indian tribes who disagree with the effect determination may directly request Council to review the disagreement and Council will respond within 15 days. In the rare situation where FHWA and SHPO cannot agree, FHWA will request Council to review the situation, and Council will provide a response within 15 days.

When an undertaking's effects are to archaeological properties significant solely for their information value (National Register Criterion D), the Section 106 PA has special provisions. Caltrans concurrently notifies FHWA, SHPO, and consulting parties, as appropriate, of the proposed finding and gives them 30 days from receipt of documents to comment on the finding. This is an important timesaving step, as the regulations do not prescribe a response time for SHPO on Adverse Effect findings. Note that the 30-day response period is to comment on the finding, not on the adequacy of the DRP.

MEMORANDUM OF AGREEMENT

The DEBC, or at the district's request CCSO Chief, submits the Finding of Adverse Effect to FHWA. The submittal may include a draft MOA, or an MOA may be prepared later. FHWA then notifies all consulting parties, including SHPO, that there is an adverse effect to historic properties and formally consults with SHPO seeking ways to avoid or reduce the adverse effect. Caltrans may perform these functions at FHWA's direction. [Exhibit 2.10](#) contains guidance for MOA format and content.

At a minimum, the signatories to an MOA include FHWA and SHPO. Caltrans is a formal concurring party to the MOA when responsibilities are assigned to Caltrans in the MOA stipulations. After being notified of the Adverse Effect, Council may choose to participate in the consultation under specific conditions, or FHWA or SHPO may request Council participation. Other consulting parties, such as the head of local government or the representative of a Native American tribe, must be invited to participate as consulting parties under certain circumstances and may be asked to participate as concurring parties at the discretion of FHWA and SHPO.

The MOA may be rewritten several times in the course of the consultation process. Two-party MOAs are used to reach agreement between FHWA and SHPO, while three-party MOAs are used to reach agreement when Council participates along with FHWA and SHPO. Whether the Council is involved, FHWA must provide a copy of the MOA to the Council for inclusion in their

files so they will have documentation of the agency's implementation of Section 106.

The signed MOA is also crucial to the Section 4(f) evaluation for a project involving an adverse effect to a historic property, because the MOA demonstrates that the consulting parties have completed all possible planning to minimize harm to the historic property.

FAILURE TO AGREE ON RESOLUTION OF ADVERSE EFFECT

If the signatory parties (SHPO and FHWA) fail to agree, any party may terminate consultation following the guidance of 36 CFR 800.7. If SHPO terminates consultation, FHWA and Council may execute an MOA. If FHWA terminates consultation, the FHWA Administrator must request Council's comments on the project. *Except in failure-to-agree situations, FHWA will not approve the final environmental document without a signed MOA.*

2-5.4 RELATIONSHIP OF SECTION 106 TO THE ENVIRONMENTAL DOCUMENT

The Section 106 process usually progresses to the point where SHPO has concurred in any historic property eligibility determinations and has been consulted regarding project effects on historic properties before FHWA gives its approval to circulate the draft environmental document.

If archaeological sites are not a major factor in selecting a preferred alternative, eligibility and effect determination for archaeological sites may be deferred until after circulation of the draft environmental document. Any sites that are on common alignment, however, must be evaluated prior to the draft document. Because of concern for identifying potential Section 4(f) properties, sufficient information must be available to evaluate whether each site is important chiefly for what can be learned through data recovery or if it warrants preservation in place. For projects with multiple alternatives, the draft environmental document should explain the proposed treatment of historic properties for each alternative in appropriate detail.

Some flexibility does exist, but FHWA must approve any deviations from the standard Section 106 milestones in the draft environmental document.

Although the draft environmental document may be used in place of submitting a separate FOE as the vehicle to afford SHPO an opportunity to comment on a project, this approach is not recommended because of potential delays, the need for unwieldy detail on historic property effects and proposed treatments, dispersal of pertinent historic property discussions throughout the document, and the potential for complicating the environmental process.

The final environmental document must demonstrate that all requirements of Section 106 have been met.

If the preferred alternative has an effect on historic properties, the final environmental document must provide evidence of the outcome of consultation. This usually includes copies of SHPO correspondence and a fully executed MOA. Under the Section 106 PA, when the finding is a No Adverse Effect with Standard Conditions, Caltrans is required only to notify FHWA and SHPO, and consultation is then concluded, thus there may be no final response letter from SHPO to include in the environmental document. This should be explained in the text of the final environmental document.

Mitigation measures are usually carried out after the final environmental document is approved.

Discussions of historic properties in the environmental document should be clear, concise, and to the point. The environmental document should include summaries of the following:

- Results of surveys and consultation undertaken (if no survey or consultation was performed, explain why not).
- Number and type of National Register eligible or listed historic properties in the APE.
- Number and type of historic properties to be affected by the project.
- Proposed treatment of those historic properties.

Include letters documenting SHPO concurrence in the environmental document's appendix, as appropriate. If no cultural resources were identified, a statement so indicating is included in the environmental document, but no supporting documentation is required. The environmental document, however, should identify the methods used to arrive at that conclusion, such as the preparation of a Negative HPSR.

Special instructions exist for treating historic properties for Categorical Exclusion (CE) projects. The CE–Section 106 Cultural Resources Checklist/Memo to File guides District staff through a series of decisions to decide whether and what type of HPSR Finding will be required for a CE project. See [Exhibit 2.13](#) for further guidance.

All back-up reports referenced in an environmental document must be made available to the public. This may include an HPSR.

Section [6254.10](#) of the California Government Code exempts archaeological records from public disclosure requirements. If archaeological site(s) are depicted on the APE map, the map should also be removed to protect the site(s') locations.

If an ASR contains information or mapping showing the locations of archaeological sites, however, the ASR shall be removed from all copies of the HPSR before it is circulated to the public. In its place, a page should then be inserted explaining that the ASR has been deleted because archaeological records are confidential.

It is important that cultural resources specialists who prepare cultural resources summaries for Section 106 documents also prepare the historic property summaries to be included in environmental documents. See [Exhibit 2.17](#) for what goes into the summaries. District PQS should review historic property sections of environmental documents for clarity and completeness. Close cooperation will help ensure adequate and accurate summaries of Section 106 compliance in the environmental documents.

2-5.5 INTERNAL REVIEW OF CULTURAL RESOURCES DOCUMENTS

Under the Section 106 PA, Caltrans is responsible for quality control of cultural resources documents on behalf of FHWA. In accordance with Section 106 PA Stipulation XV, Caltrans will not transmit documentation to FHWA and SHPO until Caltrans PQS has reviewed and approved it. All reports shall be peer reviewed by one or more Caltrans PQS in the relevant discipline(s). District PQS, or upon request, CCSO PQS will review these documents. CCSO PQS will give such reviews the highest priority in work assignments and will complete review within 15 working days of receipt of request. Districts may arrange routine review of documents with the appropriate CCSO Branch Chief.

The District Director has review and approval authority for all cultural resources compliance documents but typically delegates this responsibility to DEBCs. The appropriate CCSO Branch Chief and the CCSO Chief shall review and approve reports in draft form prepared by CCSO PQS or consultants. CCSO will then send the draft document to the requesting DEBC for review and final approval. In the event that the DEBC disagrees with the conclusions regarding the eligibility of a resource, refer to the process for resolving disagreements and differences of opinion outlined in **Chapter 2** [Section 2-11](#).

When reviewing documents that will be submitted to comply with Section 106, it is necessary to remember the purpose of the submittal and the external agency reviews. The document must present clear, factual information about the project, supported by technical studies that are professionally competent and trustworthy. External reviewers generally know only what is presented in the document. What seems obvious to specialists who prepared the studies is not necessarily obvious to external agency reviewers. Caltrans-specific terminology and acronyms are not clear to everyone. External reviewers also may have their own needs for particular items of information, such as property ad-

addresses that need to be entered into their databases in a specific way. See [Exhibit 2.14](#) for review standards and [Exhibit 2.17](#) for what constitutes good summaries for National Register eligibility, project effects and consultant preparer qualifications.

In general, reviewers should keep the following questions in mind:

- What is the undertaking?
 - ◆ Is it clearly described and justified?
 - ◆ What is the extent of ground-disturbing activities, including utility relocation, staging areas, etc.?
 - ◆ Is there a potential for indirect effects?
- Is the APE described, mapped, and justified?
 - ◆ If a Study Area was used, is it distinguished from the APE?
 - ◆ If an Area of Direct Impact is indicated, is it within the APE?
 - ◆ Are APE maps legible with properties appropriately labeled?
- Are identification and survey efforts adequate?
 - ◆ For properties being evaluated, are historic contexts adequately developed?
 - ◆ Are addresses (or similar locational information) listed for all properties?
 - ◆ Are properties shown on APE maps?
 - ◆ Are photos provided for built resources, such as buildings and structures?
- For each National Register eligible historic property, are all the following included?
 - ◆ Criteria under which found eligible.
 - ◆ Reasons for eligibility.
 - ◆ Level of significance.
 - ◆ Period of significance.
 - ◆ Contributing and non-contributing elements.
 - ◆ Spatial limits of the historic property (and National Register boundaries if different) shown on maps and described in the text.
- Who did the survey and evaluations?
 - ◆ If not Caltrans PQS, are their qualifications provided?
 - ◆ Do they meet appropriate PQS levels for actions taken under the Section 106 PA?
- For effect finding documents, are the following included?
 - ◆ Historic properties adequately described to understand the effect?

- ◆ Project effects described for each property?
- ◆ One effect finding for the undertaking as a whole?
- ◆ Any special conditions such as ESAs adequately described to understand the effect finding?

LOCAL AGENCY STUDIES

In accordance with Section 106 PA [Stipulation XV](#), local agencies must submit to Caltrans for review and approval by Caltrans PQS all documentation prepared by local agencies or their consultants in support of findings and determinations made under the Section 106 PA. Caltrans will not transmit documents to outside agencies until Caltrans PQS have reviewed and approved the documents. If a district does not have PQS in the appropriate discipline, CCSO PQS will review documents upon request of the DEBC to the appropriate CCSO Branch Chief. Such reviews will be completed within 15 working days of receipt of request. The process for resolving disagreements and differences of opinion regarding consultant-prepared findings and determinations is outlined in [Section 2-11](#).

2-5.6 ANNUAL REPORTING UNDER THE SECTION 106 PA

The Programmatic Agreement requires that Caltrans submit a report to FHWA, SHPO, and Council on activities conducted under the terms of the Section 106 PA. The report will be submitted annually for the first five years of the agreement, then every two years. It is due three months after the end of the state's fiscal year (that is, September 30). The purpose of the report is to ensure the Section 106 PA is being properly implemented, to see if it is improving efficiency in delivering the Federal Highway-Aid Program, and to see if there are ways the Section 106 PA may be improved through amendment.

The CCSO Chief is responsible for compiling the information contained in the report, but in practice the CCSO Section 106 Branch Chief will work with district staff in the compilation effort. At the end of the fiscal year, each DEBC, or District HRC as so directed, will provide the appropriate information to the CCSO Section 106 Branch Chief. The CCSO Section 106 Branch Chief will collate the information into one document that meets the Section 106 PA requirements. The CCSO will oversee distribution of the report and keep copies on hand for public inspection.

2-6 STATE-ONLY PROJECTS

2-6.1 INTRODUCTION

Caltrans projects with federal involvement are subject to both federal and state law, but when there is no federal involvement, the historical resources compliance process is subject only to state law and regulation. Under state environmental law, consideration of historical resources is primarily carried out in the context of California Environmental Quality Act ([CEQA](#)) compliance. However, there are other applicable statutes as discussed below.

Consideration and treatment of significant historical resources under state law is similar to that of federal law, but there are important substantive and procedural distinctions between CEQA and Section 106 and NEPA. There are also differences in terminology.

CEQA requires state and local agencies to prepare multidisciplinary environmental impact analyses and to make decisions regarding the environmental effects of proposed actions based on those analyses. Cultural resources are one among several environmental areas that are analyzed in a CEQA document. The type of environmental document that is prepared for a plan or project depends on the complexity of the project and the potential for significant impacts in one or more areas of environmental analysis.

The lead agency under CEQA is responsible for resource evaluation, impact analysis, and determining appropriate mitigation. For most Caltrans projects, Caltrans is also the lead agency. For purposes of this section of the handbook, the term “Caltrans” means CEQA lead agency. There is no formal process of consultation with SHPO and thus no formal concurrence in determinations of significance and effect as there is under Section 106 of NHPA. Caltrans, however, may hold informal discussions with these agencies or with other responsible agencies or members of the interested public prior to the circulation of a draft environmental document.

2-6.2 STATUTORY PROTECTIONS

The primary state environmental law that applies to Caltrans activities is CEQA ([Public Resources Code §2100](#) et seq). Other sections of the Public Resources Code establish the California Register of Historical Resources, a state listing of significant historical resources ([PRC §5024.1](#)); require state agencies to inventory state-owned resources and to formulate policies to preserve and maintain state-owned historical resources under their jurisdiction (PRC §5024); and require state agencies to consult with SHPO on projects affecting state-owned historical resources ([PRC §5024\(f\)](#) and 5024.5). The [CEQA Guidelines](#) (14 CCR §1500 et seq) provide guidance on implementing CEQA and the California Register regulations ([14 CCR §4850](#) et seq) provide further

guidance on using the California Register eligibility and integrity criteria and special considerations. [Executive Order W-26-92](#) reinforces the requirements of [PRC §5024](#) and [§5024.5](#). State regulations are summarized more fully in [Chapter 1](#), Volume 2, and are available in full in [Volume 1](#) of the *Environmental Handbook*.

DEFINITION OF HISTORICAL RESOURCES UNDER CEQA

Under CEQA, the State Historical Resources Commission (SHRC) defines a historical resource as a resource listed in or determined eligible for listing in the California Register of Historical Resources. Although the criteria for listing in the California Register are similar to those for listing in the National Register, the California Register encompasses a broader range than the National Register as to *types* of resources that may meet the California Register eligibility criteria. In addition to California Register listed resources and those found by the SHRC to be eligible for the California Register, *National Register listed and eligible properties are automatically included in the California Register and are historical resources under CEQA*. This includes all properties that were determined eligible for listing in the National Register as a result of Section 106 compliance.

Under state law only the State Historical Resources Commission can make determinations of eligibility for the California Register. SHPO has stated that Caltrans may not use that terminology when it evaluates resources for CEQA compliance. Caltrans documents need to state that a resource “is (or is not) a historical resource under CEQA because it meets (does not meet) the California Register criteria, as outlined PRC 5024.1.”

Although not automatically listed in the California Register or automatically determined eligible by the SHRC as outlined in the California Register procedures, historical resources under CEQA also include resources listed in a local register of historical resources and resources that are identified as significant in local surveys that conform to state Office of Historic Preservation (OHP) standards.

The presence of *any* cultural resources within a project area requires that cultural resources studies be initiated to determine whether any of these resources would be historical resources under CEQA. While federal regulations do not apply to state-only projects, the procedures in Section 106 PA Attachments 4 and 5 may be used to be in compliance with CEQA.

2-7 STATE-ONLY PROCEDURES

2-7.1 STATE-ONLY COMPLIANCE PROCESS OVERVIEW

When there is no federal involvement in a project, Caltrans prepares a Historical Resources Compliance Report (HRCR). [Exhibit 2.15](#) has guidance on HRCR format and content. The DEBC determines if cultural resources studies are necessary, based on the guidance outlined in this volume of the *Environmental Handbook*.

While the Programmatic Agreement that Caltrans uses for Section 106 compliance was developed specifically for federal undertakings, Caltrans policy is to use the instructions outlined in its attachments for determining Professionally Qualified Staff ([Section 106 PA Attachment 1](#)), defining Screened Undertakings ([Section 106 PA Attachment 2](#)), setting project study area or APE limits ([Section 106 PA Attachment 3](#)), defining Properties Exempt from Evaluation ([Section 106 PA Attachment 4](#)), establishing Environmentally Sensitive Areas ([Section 106 PA Attachment 5](#)), and developing Data Recovery Plans ([Section 106 PA Attachment 6](#)) for state projects also.

The HRCR has the following functions:

- Detailing identification efforts.
- Describing any identified significant historical resources.
- Discussing why they were assessed as significant.
- Determining the effect of the project on each significant resource.
- Describing the measures proposed to mitigate project effects on each significant resource.

Information from the HRCR is summarized in the draft environmental document, where a concise discussion of historical resources identification, significance, effect, and mitigation appear. The HRCR serves as the technical document that supports the conclusions contained in the environmental document. See [Section 2-9.1](#) for further details on the HRCR.

2-7.2 NEED FOR CULTURAL RESOURCES STUDIES

STATUTORY EXEMPTIONS UNDER CEQA

CEQA allows two types of exemptions, statutory and categorical. Statutory exemptions are projects specifically excluded from CEQA review by the State Legislature. These exemptions are listed in PRC [§21080 et seq](#) and in the [CEQA Guidelines](#) in [§15260](#). Statutory exemptions apply to any project that falls under its definition regardless of the project's potential impact to the envi-

ronment. *If a project is statutorily exempt, no cultural resources studies are required, unless the resources are state owned.* When state-owned resources are involved Caltrans must still comply with PRC §5024. See [Section 2-7.9](#).

CATEGORICAL EXEMPTIONS

Categorical exemptions are classes of projects that generally are considered not to have potential impacts on the environment. The Secretary of the Resources Agency identified categorical exemptions, which are defined in the CEQA Guidelines [§15300-15331](#)).

If a project has the potential to cause significant impacts to historical resources, categorical exemptions do not apply.

To determine if there are significant historical resources in the project area, and if so, whether they may be significantly impacted by the project, the District Environmental Branch staff, or upon request CCSO staff, prepares an HRCR. If the HRCR concludes that no significant historical resources are present, or those resources, although present, will not be significantly impacted, and an exemption is otherwise warranted, the DEBC prepares a Notice of Exemption, and there are no further actions under CEQA.

NEGATIVE DECLARATION AND THE EIR

If no exemption applies, a cultural resources analysis must be included in one of the following types of documentation:

- Negative Declaration (ND).
- Mitigated Negative Declaration (Mitigated ND).
- Environmental Impact Report (EIR).

Summary descriptions of historical resource significance and impacts to historical resources may be excerpted from the HRCR. See [Exhibit 2.17](#) for guidance on what to look for in these summaries.

2-7.3 PROJECT AREA

Caltrans PQS and the Project Engineer together establish a legally defensible project area that takes into account the potential direct and indirect impacts of the project upon historical resources. This project area is similar to an APE that is established for a federal project, however, under CEQA there is no formal APE. See [Section 106 PA Attachment 3](#) for guidance in setting project area limits.

2-7.4 IDENTIFICATION OF HISTORICAL RESOURCES

Historical resources should be identified and evaluated as early as possible in the project development process. CEQA requires early involvement so that environmental issues may be taken into consideration in the project design process. Caltrans policy also requires early involvement. Early involvement allows lead-time for project redesign, selection of alternatives, and incorporation of mitigation. It also allows time to complete historical resources compliance without jeopardizing project delivery schedules, considering such factors as seasonal limitations on surveys and archaeological excavations. A test excavation and report for an archaeological site on a state-only project, for instance, may take seven to twenty-four months to complete, depending on whether the work is done in-house or by a consultant.

RESEARCH

Before undertaking fieldwork, Caltrans PQS or appropriately qualified consultants conduct preliminary research looking for previously identified cultural resources. See Chapter 4 [Section 4-4](#) for sources of information that must be consulted in the effort to identify cultural resources within the project area.

Caltrans PQS or appropriately qualified consultants conduct research to establish the historic context for evaluating each resource. Studies should be developed to the extent needed to understand and properly evaluate properties within that context. The HRCR documents the results of this research.

CULTURAL RESOURCES SURVEYS

The same approach to surveys that Caltrans uses for federal undertakings is used for state-only projects. See Chapter 4 [Sections 4-5](#) and [4-6](#) for further guidance. Caltrans must undertake a survey whenever any buildings or structures lie within the project area, unless those resources have been previously evaluated. In general, all buildings and structures are surveyed regardless of age, integrity, or apparent value. However, see Chapter 4 [Section 4-4.1](#) and [Section 106 PA Attachment 4](#) for a discussion of properties that qualify for exemption from evaluation.

Guidance on conducting preliminary archaeological and reconnaissance surveys, prehistoric archaeological surveys, historical archaeological surveys, and built-environment surveys appears in Chapter 4 [Section 4-5](#). [Chapter 3](#) contains guidance on consultation with Native Americans.

2-7.5 EVALUATION OF CULTURAL RESOURCES UNDER STATE LAW

HISTORICAL RESOURCES UNDER CEQA

If a resource meets any of the following criteria, it is already considered a historical resource under CEQA:

- Listed or determined eligible by the SHRC for the California Register (including all National Register listed and eligible properties).
- Listed in a local register of historical resources under local ordinance or resolution.
- Identified as significant in a local survey meeting OHP standards and the survey is less than 5 years old or has been updated less than 5 years ago.

Unless new information surfaces, or physical conditions have changed such that a re-evaluation of a historical resource is warranted, these types of resources will likely continue to be historical resources for purposes of the Caltrans project. Their existence in the project area, however, needs to be documented in the HRCR.

In addition to identifying the above listed historical resources within a project area, Caltrans must ensure that any other cultural resources in the project area are evaluated. While federal regulations do not apply to CEQA, the procedures in Section 106 PA Attachments 4 and 5 may be used to meet Caltrans obligations for identifying historical resources.

EVALUATION CRITERIA UNDER CEQA AND PRC §5024

Caltrans evaluates the cultural resources in the project area using the criteria outlined in PRC §5024.1, as well as the relevant sections of the California Register regulations adopted by the State Historical Resources Commission (SHRC) in the California Code of Regulations (14 CCR §4850 et seq). These regulations, however, also contain nomination procedures that do not apply to Caltrans projects.

Relevant sections of the California Register regulations that Caltrans uses to evaluate historical resources include:

- [14 CCR §4850.1](#) – Purpose.
- [14 CCR §4851\(a\)](#) - Historical Resources Eligible for Listing in the California Register of Historical Resources (14 CCR §4851).
- [14 CCR §4852\(a\) through \(e\)](#) - Types of Historical Resources and Criteria for Listing in the California Register of Historical Resources.

Because the eligibility and integrity criteria provided in the California Register regulations cited above are so similar to National Register criteria, [National Register Bulletin 15](#) can provide valuable guidance in how to interpret these criteria. See [Exhibit 2.16](#) for a comparison of the California Register regulation wording to that found in the National Register criteria and National Register Bulletin 15.

Caltrans uses DPR 523 inventory forms to document evaluations. The forms are attached to the HRCR. In addition, the HRCR provides a summary conclusion of eligibility. For each cultural resource that does not qualify as an exempted property according to [Section 106 PA Attachment 4](#), state whether the property meets, or does not meet, the California Register criteria as outlined in PRC §5024.1. Add these conclusions to any existing California Register listings or determinations identified earlier in the report.

If a historical resource meets the California Register criteria, include the applicable criteria (Criteria 1, 2, 3, and/or 4), a brief description of how it meets these criteria, the level of significance, the period of significance, contributing and non-contributing elements of the resources, and a textual description of the historical resource's boundaries. The boundaries must be depicted on the appropriate DPR 523 form, as well as on the project area map.

Caltrans, as lead state agency on its projects, makes the determination as to whether a resource it evaluates is a historical resource under CEQA. It is not SHPO's determination. SHPO, however, can comment on that determination as part of the CEQA process.

It is Caltrans policy to apply both the National Register criteria and the California Register criteria simultaneously when conducting evaluations. Conclusion sections of the HRCR and the appropriate DPR 523 inventory forms will need to state whether a resource appears to be eligible for the National Register, as well as whether it is a historical resource under CEQA because it meets California Register criteria as outlined in [PRC §5024.1](#). The simultaneous use of National Register and California Register criteria is needed for compliance with PRC §5024 for state-owned resources, and can save time and effort in having to reevaluate resources, should a state-only project become a federal undertaking.

2-7.6 DETERMINATION OF PROJECT EFFECTS UNDER STATE LAW

Caltrans determines the impact of the project on each historical resource by applying the criteria of significant effect set forth in state law and regulation. [PRC §5020.1\(q\)](#) defines "substantial adverse change" in a historical resource to mean:

- Demolition.

- Destruction.
- Relocation.
- Alteration such that the significance of the resource would be impaired.

California law is explicit that a substantial adverse change in the significance of an historical resource is a significant impact on the environment.

Any activity that would result in the destruction of a historical resource's characteristics would be a significant impact under CEQA when those characteristics justify the historical resource for:

- Inclusion in, or eligibility for, the California Register.
- Inclusion in a local register (if designated under local ordinance or resolution).
- Identification as significant in a local survey that meets OHP standards.

Be aware that the word “adverse” is used differently in federal and state terminology. The federal “*Adverse Effect*” defines a *class* of actions regardless of mitigation; CEQA guidance, on the other hand, specifies that a project that adversely impacts a historical resource has a significant *effect on the environment*, but mitigation can reduce that effect.

Use the HRCR to identify and analyze potential impacts to historical resources.

2-7.7 DETERMINATION OF APPROPRIATE MITIGATION UNDER STATE LAW

CEQA requires that state and local agencies avoid or minimize significant adverse environmental impacts whenever feasible.

Caltrans PQS and appropriately qualified consultants may develop mitigation measures. For built-environment historical resources, when mitigation measures involve plans, specifications or are developed to minimize effects that physically affect these resources, the measures need to be developed or reviewed by, or under the direct supervision of, a Principal Architectural Historian. The kind of specialized experience needed to mitigation measures that directly affect built-environment historic properties is contained in Chapter 1 [Section 1-3.3](#) – Architectural History and History.

Mitigation measures should avoid, minimize, rectify, reduce, or compensate for physical impacts to resources. CEQA encourages the use of measurable performance standards that facilitate mitigation monitoring. In considering historical resource mitigation, remember that maintenance, repair, stabilization, rehabilitation, restoration, or preservation are considered to mitigate below a level of significant impact only when the work is consistent with the *Secretary*

of the Interior's Standards for the [Treatment of Historic Properties](#) With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings.

If mitigation below a level of significant impact can be accomplished by changes in project design and can be incorporated into the project, a Negative Declaration (ND) can be prepared. To be feasible, a measure must be capable of being accomplished in a successful manner in a reasonable period of time.

Because CEQA requires that *physical* impacts must be avoided or lessened by mitigation, Historic American Building Survey (HABS) or Historic American Engineering Record (HAER) recordation do not mitigate below a level of significance in the case of demolition or destruction, but they may lessen impact in cases of alteration.

CEQA CLASS 31 PROJECTS

If the *only* activity under consideration is maintenance, repair, stabilization, rehabilitation, restoration, or preservation of a historical resource, and the work is done according to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, cited above, the project is considered a [Class 31](#) project and is categorically exempt from CEQA. To ensure these activities are consistent with these standards, they must be reviewed by, or under the direct supervision of, a Principal Architectural Historian. For specialized experience needed to conduct this review, see guidance in Chapter 1 [Section 1-3.3](#) - Architectural History and History.

ARCHAEOLOGICAL SITES

Under CEQA, avoidance is the preferred mitigation for archaeological sites. The CEQA Guidelines [§15126.4\(b\)\(3\)](#) provides discussion of archaeological mitigation. When data recovery is the only prudent and feasible alternative, prior to any excavation a Data Recovery Plan (DRP) must be prepared that provides for recovery of scientifically consequential information.

All DRPs that identify costs of \$500,000 and above must be sent to CCSO for review and comment.

CCSO will complete its review in fifteen (15) working days from receipt of the plan. DRPs are filed with the California Historical Resources Regional Information Center.

Data recovery under CEQA is not required when Caltrans determines that already-completed studies have adequately recovered a site's important information. Mitigation cost limitations do not apply to public agencies that comply with CEQA provisions regarding mitigation of significant effects. Pro-

visions for dealing with accidental discovery of archeological sites in the course of construction should be included among the mitigation provisions. [Section 2-8.1](#) has further guidance on state-only projects.

Include the plans for mitigating project impacts in the HRCR.

TIMING WITH CEQA ENVIRONMENTAL DOCUMENTATION

The DRP should be completed prior to the circulation of a draft environmental document. However, in some cases test excavations and DRP preparation may require more time than is available before circulation of the draft environmental document. When a DRP cannot be completed prior to draft circulation, the plan must be completed by the time the final environmental document is certified.

2-7.8 PROCESSING THE HRCR FOR STATE-ONLY PROJECTS

The HRCR is similar in content and format to the HPSR. A Short Form HRCR may be used instead of a narrative text, but for large, complex or controversial projects a narrative text HRCR may be preferable. [Exhibit 2.15](#) provides an outline of the format and instructions for preparing HRCRs.

District PQS, appropriately qualified consultants, or upon request CCSO PQS, prepare the HRCR. The preparer signs the title page in the narrative format or the appropriate signature block on the short form of the HRCR. Caltrans PQS must review and approve consultant-prepared HRCRs and indicates the review has been completed by signing the title page in the narrative format or the appropriate signature block on the short form. Caltrans PQS-prepared HRCRs must also be peer reviewed and the PQS conducting the review signs the HRCR as stated above for reviews of consultant-prepared HRCRs.

The DEBC approves the HRCR by signing the title page in the narrative text format or the approval signature block of the short form HRCR. The document then is filed in the district files. The DEBC forwards the project's mitigation measures and commitments to the appropriate project manager for inclusion in the project and construction files. The District HRC sends one copy of the HRCR to CCSO for filing. If there are evaluated state-owned resources documented in the HRCR, the DEBC, or upon request the CCSO BEPS Chief, forwards the HRCR to SHPO for review and comment under the provisions of PRC §5024 ([Section 2-7.9](#)).

The historical resources sections of the draft environmental document summarize the information contained in the HRCR. The draft environmental document states that the HRCR is on file at the District office for public review. If an ASR contains information or mapping showing the locations of archaeological sites is attached to the HRCR, however, the ASR shall be removed from all copies of the HRCR before it is made available for public

review. In its place, a page should then be inserted explaining that the ASR has been deleted because archaeological records are confidential. Likewise, if archaeological site(s) are depicted on the Project Area map, the map should also be removed to protect the site(s') locations.

Any comments that Caltrans receives from SHPO, other public agencies, or the interested public, as well as any additional information that has become available, must be taken into consideration and discussed in the final environmental document.

2-7.9 STATE-OWNED CULTURAL RESOURCES

When there are state-owned buildings, structures, or archaeological sites within the project area, Caltrans uses the HRCR to comply with PRC §5024. Section [§5024\(a\)](#) states that each state agency shall formulate policies to preserve and maintain, when prudent and feasible, all state-owned historical resources under its jurisdiction. To meet this requirement, Caltrans must identify and record all buildings, structures, and archaeological sites within its right of way.

IDENTIFICATION AND EVALUATION OF STATE-OWNED RESOURCES

As with CEQA compliance, compliance with PRC §5024 entails identification and evaluation of the state-owned buildings, structures, and archaeological sites within the project area to determine whether the resources meet the National Register of Historic Places criteria or [California Historical Landmark \(CHL\) criteria](#).

Under CEQA, the California Register of Historical Resources criteria are used to evaluate resources. The requirements for PRC 5024 are different. In order to comply with PRC 5024, Caltrans needs to evaluate its state-owned resources to determine whether the resources meet the criteria for inclusion in National Register or are eligible as California Historical Landmarks [PRC 5024(a) – (d)].

Under [PRC §5024\(d\)](#), Caltrans requests SHPO to add the state-owned buildings and structures that meet the National Register or California Historical Landmark (CHL) criteria to the Master List of Historical Resources. This is a special list of state-owned resources that includes only historic buildings and structures. The Master List does not include archaeological sites, and it does not include locally designated landmarks or California Register listed or eligible resources other than National Register listed/eligible or CHL listed/eligible resources. See [Section 2-9.1](#) for further details on documenting state-owned resources in the HRCR.

[PRC §5024.5\(f\)](#): Until such time as a structure is evaluated for possible inclusion in the inventory pursuant to subdivisions (b) and (c) of Section 5024, *state agencies shall ensure that any structure that might qualify for listing is not inadvertently transferred or unnecessarily altered.*

ASSESSMENT OF EFFECTS TO STATE-OWNED RESOURCES

Under [PRC §5024\(f\)](#), Caltrans must submit to SHPO for comment documentation for any project having the potential to affect historical resources listed in or potentially eligible for inclusion in the National Register of Historic Places or registered as or eligible for registration as a CHL. Typically, Caltrans uses this section of the code to document no effects to state-owned historical resources (buildings and structures) on the Master List. According to SHPO, PRC §5024(f) also applies to archeological sites that are listed in or have been determined eligible for inclusion in the National Register of Historic Places, or are registered or determined eligible for registration as a CHL. Therefore, under PRC §5024(f) Caltrans also requests SHPO's comments and provides documentation of effects (No Historic Properties Affected, No Adverse Effect, Adverse Effect) to National Register listed/ eligible or CHL registered/eligible archeological sites.

Like Section 106 but unlike CEQA, [PRC §5024.5](#) uses the term “adverse effect” instead of “substantial adverse change” to describe effects to state-owned historical resources on the Master List. Like Section 4(f) of the U.S. Transportation Act, PRC §5024.5 uses the terms “prudent and feasible” and requires the head of Caltrans to adopt prudent and feasible measures that will eliminate or mitigate the adverse effects to state-owned historical resources on the Master List.

Under PRC §5024.5, early in the planning process, Caltrans must provide SHPO with a notice and summary documentation of projects involving state-owned historic buildings and structures on the Master List (see above for definition). As outlined in PRC §5024, SHPO makes the determination as to whether an effect is adverse, not Caltrans.

Use the HRCR to summarize the evaluated state-owned historic buildings and structures and to describe potential effects to the state-owned historical resources. Project activities that may affect state-owned structures and that require SHPO review and comment include:

- Alteration of original features or fabric.
- Transfer.
- Relocation.
- Demolition.

Include in the HRCR proposed measures that are prudent and feasible and that would avoid or mitigate adverse effects to the state-owned historic buildings

and structures. In addition, the HRCR needs to provide evidence that Caltrans has consulted with the [State Historical Building Safety Board](#), as appropriate.

SHPO REVIEW AND COMMENT – STATE-OWNED RESOURCES

Caltrans uses the HRCR as a combined evaluation and effect document when requesting SHPO's review and comments under PRC §5024. For situations in which the proposed actions are not yet known, or will be phased, the HRCR may be used to request SHPO's comments first on whether a state-owned resource meets the National Register or CHL criteria and should be added to the Master List, and later, when activities or actions are known, to request SHPO's comments on effects to state-owned historical resources in the project area. For example, when planning for future maintenance, repairs, or rehabilitation of a Caltrans building or structure, it may be necessary first to identify whether the resource is historical in order to guide the type and scope of future repairs, maintenance, or rehabilitation.

When Caltrans determines there are state-owned resources in the project area that meet National Register or California Historical Landmark (CHL) criteria and those resources were not previously identified, Caltrans requests that SHPO add these resources to the Master List, pursuant to [PRC §5024\(b\)](#).

For projects that, in Caltrans opinion, have no adverse effects or adverse effects on state-owned historical resources on the Master List, Caltrans must include in the HRCR proposed measures that are prudent and feasible and that would avoid or mitigate adverse effects to the state-owned historic buildings and structures. If there is no prudent and feasible alternative, Caltrans must provide justification in the HRCR.

DEBC does not need to forward the HRCR to SHPO in the following circumstances:

- State-owned historical resources that have *previously* been determined not eligible for the National Register or as CHL, because SHPO has already concurred in the finding.
- State-owned buildings and structures that meet the criteria for Properties Exempt from Evaluation in Section 106 PA Attachment 4 and were reviewed by appropriately qualified Caltrans PQS.
- State-owned bridges that were 50 years old or older when evaluated and are listed as Category 5 in the Caltrans Historic Highway Bridge Inventory

The district HRC files one copy of the HRCR in the district files and forwards one copy to the CCSO BEPS Chief. When there are no state-owned historical resources in the project area, this alternate procedure helps reduce the SHPO workload. However, if there is public controversy, disagreement among the PQS as to eligibility, or the state-owned resource has a high profile, such as

road segments that are part of state- or nationally recognized historic routes (e.g. Route 66, U.S. 40, Lincoln Highway, etc.), Caltrans must forward the HRCR to SHPO for review and comment.

If there are no effects to state-owned historical buildings and structures, in the HRCR and in the transmittal memo Caltrans requests SHPO's review and comment pursuant to [PRC 5024\(f\)](#). This section of the code is also cited for effects to state-owned National Register listed or eligible or CHL registered or eligible archaeological sites for all effect determinations (no effects to state-owned historical resources, No Adverse Effect, Adverse Effect). If the finding is No adverse Effects or Adverse Effects to state-owned historical buildings or structures on the Master List, Caltrans requests SHPO's review and comment under [PRC §5024.5](#). In addition, the HRCR needs to provide evidence that Caltrans has consulted with the State Historical Building Safety Board, as appropriate.

The DEBC submits the HRCR and its accompanying transmittal letter to SHPO and requests SHPO's review and comment as described above. SHPO has 30 days from receipt of adequate documentation to review and comment on the proposed project and mitigation measures, if applicable. As with Section 106 procedures, SHPO may request additional information. Under [PRC §5024.5\(e\)](#) SHPO may monitor Caltrans' implementation of proposed actions.

The DEBC also submits one copy of the HRCR to the CCSO BEPS Chief. This is needed because this branch of the CCSO is responsible for updating the Caltrans list of state-owned historical resources and for submitting an annual report to SHPO of PRC §5024 inventories and activities.

The District Environmental Branch maintains SHPO's written comments in its files in order to be in compliance with [PRC §5024.5\(c\)](#), and forwards a copy of the comments to the CCSO BEPS Chief for filing.

If Caltrans "refuses to propose, to consider, or to adopt prudent and feasible alternatives to eliminate or mitigate adverse effects on state-owned historical resources on the master list," SHPO is required by law to report Caltrans to the Office of Planning and Research for mediation, pursuant to [PRC §5024.5\(d\)](#).

2-8 SPECIAL CONSIDERATIONS UNDER STATE LAW

2-8.1 LATE DISCOVERIES

CEQA encourages agencies to make provision for archeological sites accidentally discovered during construction. Caltrans should include such provisions in the HRCR and in the mitigation section of the environmental document.

Standard provisions include:

1. Work in the area of the resource must stop immediately; and
2. An appropriately qualified cultural resources specialist must evaluate the discovery. If the resource is assessed as significant, Caltrans ensures that plans for mitigating project effects are immediately developed.

In the case of accidental discovery, the District Construction Branch notifies the District Environmental Branch staff. The District Environmental Branch carries out the evaluation and determines appropriate mitigation, or requests the CCSO to do so. Caltrans may consult with SHPO.

If construction cannot continue in the area of the significant resource until mitigation occurs, the DEBC or District HRC notifies the Construction Branch to this effect.

2-8.2 EMERGENCY PROCEDURES

An emergency is a situation of clear and imminent danger that threatens the loss of or damage to life, health, property, or essential public services.

[PRC §5028](#) outlines procedures to follow when a resource listed in a national; state or local register of historic places is damaged during a natural disaster. *In declared emergencies, a structure cannot be demolished, destroyed, or significantly altered (except for restoring its historical value), unless the structure presents an imminent threat to the public or to adjacent property, or unless SHPO determines those actions may be taken.*

SHPO's determination is based on relevant factors, including the historical significance of the structure, the extent of the damage, and the costs involved. SHPO also considers recommendations provided by a team of local historic preservation experts. SHPO's determination must be made within 30 days after the receipt of the application from any local government agency requesting the determination.

CEQA emergency exemptions apply to projects undertaken: 1) to prevent or mitigate an emergency; or 2) to address disaster-damaged or destroyed properties. But the emergency exemptions do not apply to projects that alter a significant historical resource unless the condition of the resource itself constitutes an emergency, as defined by [PRC § 21060.3](#).

For state-owned historical resources, Caltrans still must comply with PRC §5024.5. Caltrans should notify SHPO of the emergency as soon as possible, preferably within three (3) calendar days. In the notification, Caltrans should state that it is consulting with SHPO under PRC §5024.5, what the impact was, what emergency actions were taken, and that Caltrans will follow up with written documentation and more permanent repairs as soon as possible. The initial contact with SHPO may be via telephone and e-mail, but follow-up consultation and documentation needs to be in written format.

2-8.3 NATIVE AMERICAN BURIALS

Native American burials in California are under the purview of the Native American Heritage Commission. [PRC §5097.98](#) governs the actions that Caltrans must take when burials are identified in a project area, or when they are accidentally discovered. Although the treatment of burials is exempt from CEQA, the CEQA Guidelines at [CCR §15064.5\(d\) and \(e\)](#) provide assistance in complying with the applicable statutes. [Chapter 3](#) discusses the requirements for treating Native American burials.

2-9 STATE-ONLY DOCUMENTS

Caltrans prepares a single document, the Historical Resources Compliance Report (HRCR), to document Caltrans' historical resources consideration and compliance efforts under California law. Under specified circumstances, described below, the HRCR may be augmented by a second document, the Data Recovery Plan.

2-9.1 HISTORICAL RESOURCES COMPLIANCE REPORT

The HRCR discusses all aspects of historical resources compliance: resource identification, significance, effect, and mitigation. District PQS typically prepare the HRCR. See [Exhibit 2.15](#) for format and content. Attach copies of all historical resources technical reports to the HRCR.

After a brief project description and summary of findings, describe all cultural resources identified within the Project Area, and refer to attached individual cultural resources reports. Next, assess the significance of each resource, providing adequate information to understand any importance, without excessive detail. Identify any state-owned resources that are subject to PRC §5024.

When a resource, such as an archaeological site, is important for the information it contains, present a concise statement on the research issues that could be addressed by studying the resource, and describe how the data it contains can address these issues.

The HRCR effect statement describes how the project would physically affect historical resources. Include any indirect effects, such as increased noise or introduction of elements out of character with a resource that could affect the resource's significance.

Finally, discuss mitigation efforts to be undertaken to offset project effects. The report should indicate whether the proposed mitigation would reduce project impacts below a level of significance. Note that preservation in place is the preferred option.

If the only activity under consideration is maintenance, repair, stabilization, rehabilitation, restoration, or preservation of a historical resource, and the work is done according to the *Secretary of the Interior's [Standards for the Treatment of Historic Properties](#)*, the project is considered to be mitigated to a level of less than significant impact to the historical resource. Under PRC §5024.5, the project would have no adverse effect on a state-owned historical resource on the Master List.

When proposing data recovery as mitigation, summarize the DRP in the HRCR. Archaeological proposals for data recovery or test excavations are prepared as separate documents. The data recovery proposal fulfills the CEQA requirement for a DRP. District PQS typically write the DRP.

2-9.2 INTERNAL REVIEW OF DOCUMENTS FOR STATE-ONLY PROJECTS

The District Director has review and approval authority for all CEQA-related historical resources compliance documents, but normally delegates this responsibility to the DEBC. All cultural resources documents must be peer reviewed by Caltrans PQS. Peer reviews of state-only documents are the same as for Section 106 documents. See [Section 2-5.5](#) for details regarding peer reviews, keeping in mind that the appropriate state laws, and regulations must be cited and addressed.

2-9.3 RELATIONSHIP TO CEQA ENVIRONMENTAL DOCUMENTS

The HRCR must be complete by the time the environmental document is circulated to the public. When PRC §5024(f) or §5024.5 review is involved, send the HRCR to SHPO *before* circulating the draft environmental document, so that SHPO comments can be incorporated. Allow SHPO at least 45 days before circulating the draft environmental document to comfortably accommodate their 30-day review period.

Because PRC §5024.5 consultation with SHPO must be complete by final environmental document approval, initiate SHPO review as early as possible.

As a state agency with jurisdiction by law under CEQA, SHPO has the opportunity to review and comment on effects to historical resources during the draft environmental document public review period. SHPO receives a copy of all state agency environmental documents filed through the State Clearinghouse. However, districts also should include SHPO on their mailing list for any draft environmental documents that include historical resources analysis.

The historical resource compliance process is complete upon approval of the final environmental document. Caltrans will carry out mitigation after final environmental document approval but before construction begins.

2-10 NEPA AND CEQA JOINT COMPLIANCE

Caltrans projects that have federal involvement also must comply with state environmental law and regulations. In general, this joint compliance is integrated at the time the joint NEPA/CEQA documents are prepared. While NEPA and CEQA are similar in concept, they differ in terminology, procedures, and substantive mandates to protect the environment. In general, when preparing joint compliance documents, agencies apply whichever standard, state or federal, is the more stringent. In preparing cultural studies, apply the federal standard when preparing preliminary studies and Section 106 compliance documents.

Surveys and evaluations that meet the federal standards generally satisfy CEQA and PRC 5024 requirements.

The criteria for listing in the California Register of Historical Resources are similar to the criteria for listing in the National Register of Historic Places. However, there are some areas in which the state requirements differ from federal standards.

What is considered a historical resource under CEQA is broader and more encompassing than what are considered historic properties that meet the criteria for listing in the National Register of Historic Places. Under CEQA Guidelines, at [CCR §15064.5](#), the following are historical resources:

- *Resources designated under a local ordinance or resolution.* These same locally designated resources, however, might not be eligible for listing in the National Register.
- *Resources identified as significant in locally adopted surveys* that conform to Office of Historic Preservation standards. However, they might not meet National Register criteria.

Likewise, the California Register criteria, as outlined in the California Register regulations at [CCR §4852\(d\)](#), include special considerations for types of cultural resources that normally are not considered eligible for listing in the National Register, such as:

- Moved buildings, structures, or objects.
- Historical resources achieving significance within the last 50 years.
- Reconstructed buildings.
- Properties identified in historical resources surveys.

See [Exhibit 2.16](#) for more detailed information on the conditions under which these resources would meet the California Register criteria, and would be considered historical resources under CEQA.

Under California law, demolition or destruction of a historical resource is a significant impact and cannot be mitigated to less than significant impact by HABS/HAER recordation. See [Section 2-7.7](#) of this chapter.

2-11. DISAGREEMENTS AND DIFFERENCES OF OPINION

Disagreements and differences of opinion on conclusions in cultural resources documents may happen, and there is an established procedure for handling them. This procedure is applicable whether FHWA or Caltrans is the lead agency.

If DEBC or higher management disagrees with the conclusions in a staff-prepared cultural resources document(s), such as an HPSR, HRCR, HRER, ASR, Bridge Evaluation, Finding of Effect, it may be rewritten.

Differences of opinion with technical reports (ASR, HRER) should be discussed with the author. If there is still disagreement, the process outlined below is followed.

CALTRANS-PREPARED DOCUMENTS

The author's name is removed from the title page, or the report is revised to clearly indicate the author's text or conclusions versus management's text or conclusions. Caltrans sends the report to FHWA and SHPO documenting the difference of opinion and presenting both views for review. In situations where there are professional disagreements between management and staff on cultural resources issues, it is strongly advised that the CCSO Chief be notified.

CONSULTANT-PREPARED DOCUMENTS

If there is disagreement between Caltrans PQS and a consultant that has not been resolved, Caltrans PQS prepares an abbreviated separate document that explains the disagreement. It may refer to relevant sections of the consultant-prepared report for which there is no disagreement instead of repeating the section(s) wholesale (e.g. Historical Overview, Research Methods, maps, etc.)

The Caltrans-prepared document is the *primary* document (HPSRs, HRERs, ASRs, Bridge Evaluations, or Finding of Effect) and includes

- Brief discussion of disagreement that documents both opinions.
- FHWA/Caltrans opinion as the first one set forth in the document.
- Consultant's opinion as secondary opinion.

- If correspondence is included, it should be as an attachment and not included in the document; be sure documentation represents both sides of disagreement.

Caltrans technical reports are not supplementary documents but primary documents, followed by consultant-prepared documents. This process applies to reports prepared by district staff, CCSO staff, and consultants.

For state-only documents, such as HRCRs, the same procedure is followed; except they are not sent to FHWA and the prevailing opinion is Caltrans.

2-12. ANNUAL REPORTING UNDER PRC §5024

[PRC §5024\(e\)](#) requires Caltrans to submit an annual report to SHPO that includes Caltrans' inventory updates of state-owned resources, and a statement of its year's preservation activities. In Headquarters, the CCSO BEPS Chief is responsible for preparing this report and submitting it to SHPO. In the districts, the DEBC is responsible for ensuring that a copy of all documents and correspondence relative to PRC §5024 compliance and state-owned resources routinely is sent to the CCSO BEPS Chief.